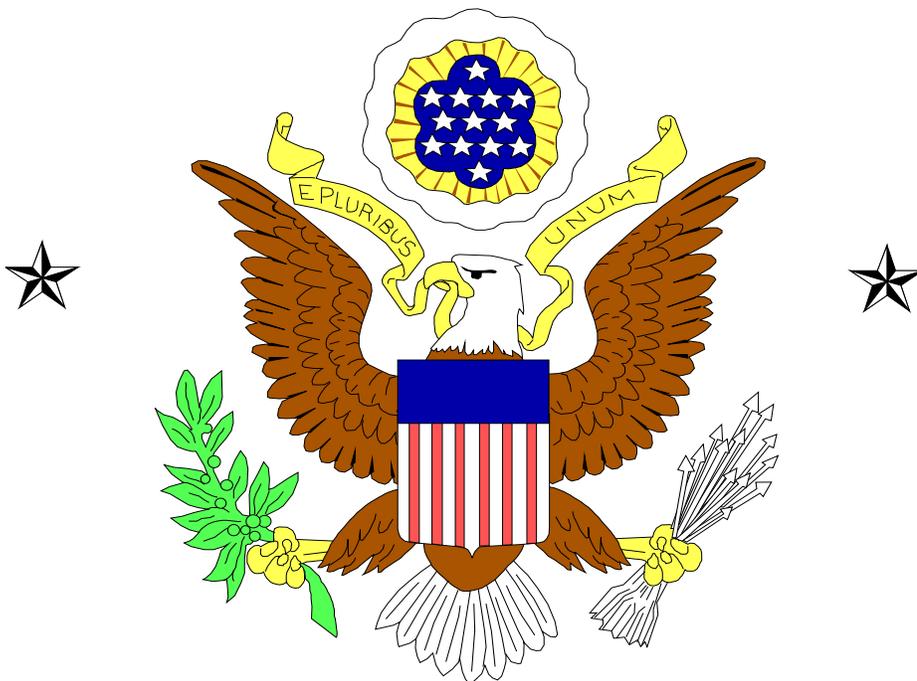


**UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MINNESOTA  
LOCAL RULES**



**November 18, 2013**

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## **2012 ADVISORY COMMITTEE'S PREFACE ON STYLISTIC AMENDMENTS**

The amendments to the Local Rules adopted by the Court in 2011 and 2012 are primarily intended to be stylistic. Some of the amendments are substantive, however, and the Federal Practice Committee has attempted to identify those substantive amendments in the advisory committee notes. An amendment should be presumed to be stylistic unless the accompanying advisory committee note identifies it as substantive.

The stylistic amendments to the Local Rules were part of an initiative to respond to the restyling of the Federal Rules of Appellate Procedure (1998), Federal Rules of Criminal Procedure (2002), Federal Rules of Civil Procedure (2007), and Federal Rules of Evidence (2011). Because attorneys refer to both the Federal Rules and the Local Rules when practicing in federal court, the Committee attempted to minimize stylistic differences between the Federal Rules and the Local Rules to the extent practicable. In this stylistic initiative, the Committee also attempted to recommend to the Court rule language that would increase the accessibility and usability of the Local Rules.

## **2012 ADVISORY COMMITTEE'S PREFACE ON LR FORMS 3-6**

Over the years, the Court has crafted LR Forms 3 through 6 to assist litigants to comply with the Local Rules. Form 3 (non-patent cases) and Form 4 (patent cases) were created to assist parties in conducting 26(f) meetings, preparing the 26(f) report, and preparing for the initial pretrial conference. Form 5 (patent cases) and Form 6 (non-patent cases) are template protective orders.

In 2012, the Court implemented several changes to Forms 3 and 4. Revised Forms 3 and 4 incorporate the amendments to LR 16.2 and LR 26.1 that require the parties to discuss at the 26(f) conference whether a protective order is necessary and the court to address any unresolved issues related to the protective order at the initial pretrial conference. Revised Forms 3 and 4 also require the parties to discuss the discovery of electronically stored information, a required element of the Fed. R. Civ. P. 26(f)(3)(C) discovery plan.

The Court adopted additional substantive amendments to Form 4 at the suggestion of a group of judges and patent practitioners who had studied ways to make patent litigation more efficient. The group's study included interviews with all of the judges in the District and a survey of patent practitioners. The changes to Form 4 clarify requirements for various exchanges between the parties and submissions to the court in patent cases, including that the parties may amend their claim charts and prior art statements only by leave of court. Form 4 requires the parties file a joint patent case status report to address claim construction, including whether a claim construction hearing should be held and whether the parties request a pre-claim construction conference with the court. The option to request a pre-claim construction conference is

new. The changes also provide alternative deadlines for expert discovery based on the issuance of the court's claim construction order.

Forms 5 and 6 were not amended but are expressly referenced for the first time in the text of the Local Rules, in LR 26.1.

## **2005 PATENT ADVISORY COMMITTEE'S PREFACE**

Pursuant to 28 U.S.C. § 2077, the Court appointed an Advisory Committee to prepare a draft of the 2005 Amendments and to make recommendations to the Court with respect to local rules for patent cases in the District of Minnesota. The Advisory Committee consisted of the following members:

Mr. Jake M. Holdreith, Chair  
Mr. Jeffer Ali  
Ms. Alana T. Bergman  
The Honorable Arthur J. Boylan  
Ms. Sue Halverson  
Mr. Peter M. Lancaster  
Professor R. Carl Moy  
Mr. James T. Nikolai  
The Honorable James M. Rosenbaum  
Mr. Richard D. Sletten  
Ms. Becky R. Thorson

The Committee wishes to express its gratitude to all those who aided its efforts. Special thanks are due to a few individuals. Wendy S. Osterberg, the Chief Deputy Clerk, provided invaluable information and support, and she was ably assisted by Karen Mack and Mary McKay. Finally, we would like to recognize Rachel Clark Hughey and Annie Huang for their contributions to the formulation of these Rules.

These Rules are designed to ease, simplify, and reduce the cost of patent practice in the District of Minnesota. Patent cases are frequently complex. These Rules are designed to streamline the pre-trial and claim construction processes.

The bar bears the dual role as zealous advocates for its clients as well as its concomitant duties as officers of the Court. It is expected by the Court that counsel will emphasize and discuss both of these obligations with their clients.

The Court has the ability to use its traditional means of shifting costs or imposing sanctions for any practice which impedes the efforts under these amendments to further the goals established in Rule 1 of the Federal Rules of Civil Procedure.

The Committee prepared its draft and made its recommendations with the following objects in mind:

1. Reducing the cost and burden of patent litigation in Minnesota without sacrificing fairness.
2. Promoting consistency and certainty in how patent cases are handled in Minnesota.
3. Addressing issues that are recurring in most patent cases and that all litigants and the Courts have some common interests in managing by rule, in particular disclosure, discovery, and claim construction issues.
4. Promoting the greatest and most accessible understanding of patent issues and technical issues by litigants, Courts, and juries.
5. Minimizing the discovery procedural disputes that often lead to the same outcome and could be resolved at less cost and burden, at least presumptively, by rule rather than by motion.
6. Discouraging expensive and/or burdensome litigation procedures that do not substantially contribute to the resolution of patent cases.

With these objects and priorities in mind, the Committee considered a number of rules and procedures that have been used in the District of Minnesota and in other districts in patent cases, including in particular the case management orders for patent cases that have been entered in patent cases by individual judges in the District of Minnesota with patent-specific provisions, as well as the local rules in the District of Delaware and the Northern District of California. From a large number of proposals, the Committee focused its draft and recommendations on the areas that, in the opinion of the Committee, are likely to arise in a majority of patent cases and which lend themselves to management by rules that should not advantage or disadvantage any particular litigants or groups, but should reduce time, burden, and expense when governed by rule rather than motion practice or stipulation.

Each Local Rule is followed by an effective date. The Local Rules with an effective date of 2005 were adopted at the recommendation of the 2005 Patent Advisory Committee.

## **1996 ADVISORY COMMITTEE'S PREFACE**

After the 1991 Amendments to the Local Rules of the District of Minnesota, two important procedural events occurred that required a new look at the Local Rules. First, the Federal District Court for the District of Minnesota promulgated a Civil Justice Reform Act Implementation Plan ("CJRA Plan"), as required by the Civil Justice Reform Act of 1990, 28 U.S.C. §§ 471-82. The CJRA Plan, which was promulgated on August

23, 1993, supplemented and to some extent supplanted the then-existing Local Rules. Second, the Supreme Court promulgated a set of amendments to the Federal Rules of Civil Procedure (“National Rules”). These amendments to the National Rules became effective on December 1, 1993. They made important changes in discovery and pretrial procedure, while giving leeway to district courts to use Local Rules to “opt out” or modify many of the new procedures.

These 1995 amendments to the Local Rules are designed to provide a single authoritative compilation of the procedural rules of the District, so that practitioners will no longer need to refer both to the Local Rules and to the CJRA Plan. They also set forth the Court’s decisions on whether to exercise local options permitted under the discovery and pretrial conference provisions of the 1993 amendments to the National Rules.

The provisions of the 1993 amendments to the National Rules that related to discovery and mandatory pretrial disclosure were controversial. A number of courts in other districts modified or opted out of those provisions. The Federal District Court for the District of Minnesota decided to give the new National Rules a trial before promulgating Local Rules in reaction to them. After reviewing this experience and considering arguments for and against the new discovery and disclosure process, the 1996 Advisory Committee recommended acceptance of the principal provisions of the 1993 amendments to the National Rules. The Committee’s recommended 1996 amendments to the Local Rules do, however, exempt certain categories of cases from some of the provisions of the National Rules, and modify other provisions to meet concerns expressed during the Committee process. The Committee’s recommended rules also opt out of certain provisions of the National Rules relating to disclosure or discovery of information about expert testimony and set forth a different procedure for expert discovery.

Each Local Rule is followed by an effective date. Those Local Rules with an effective date of 1996 were adopted at the recommendation of the 1996 Advisory Committee. The Local Rules with an effective date of 1991 were adopted at the recommendation of the 1991 Advisory Committee, whose Advisory Committee Preface follows this one. In a few instances, the 1995 Advisory Committee made minor technical changes in the 1991 Local Rules (such as substituting “Magistrate Judge” for “Magistrate”) without changing the 1991 notation following the rule. Where one subsection of a Local Rule was promulgated in 1991 and one subsection was promulgated in 1996, a date notation follows each subsection.

When it promulgated the 1991 Local Rules, the Court, at the recommendation of the 1991 Advisory Committee, re-adopted a number of rules that pre-dated 1991, while re-numbering them to facilitate reference to related National Rules. The 1991 Advisory Committee’s Preface describes this process and enumerates the rules that pre-dated 1991.

Pursuant to 28 U.S.C. § 2077(b), the Court appointed an Advisory Committee to prepare a draft of the 1996 Amendments and to make recommendations to the Court. The Advisory Committee consisted of the following members:

Mr. Clifford M. Greene, Chair	Mr. Jeffrey Keyes
Mr. Sidney Abramson <sup>1</sup>	Mr. George Koeck
Ms. Barbara Berens	The Honorable Richard H. Kyle
Mr. Tyrone Bujold	Mr. Larry Minton
Ms. Laurie Davison	The Honorable Franklin L. Noel
The Honorable David S. Doty	Mr. Thomas J. Radio
Mr. Francis E. Dosal (ex officio)	Mr. Robert Small
The Honorable Raymond L. Erickson	Ms. Janice M. Symchych
Mr. Mark Hallberg	Mr. Frank E. Villaume, III
Professor Eric Janus	Professor Roger C. Park, Reporter
Mr. Joshua J. Kanassatega	

The Committee wishes to express its gratitude to all those who aided its efforts. Special thanks are due to a few individuals. Frank Dosal, the Clerk of Court, provided invaluable information and support in formulating both the 1991 and 1996 rules, and he was ably assisted by Sara Nielsen and Wendy Schreiber. Russell A. Blanck gave selflessly of his time and counsel. Finally, we would like to recognize Caron Pjanic for her exemplary care and effectiveness in processing and assembling the rules, without which the task of the Committee and its Reporter would have been much more difficult.

### **1991 ADVISORY COMMITTEE'S PREFACE**

These Local Rules are promulgated pursuant to the enabling legislation in 28 U.S.C. § 2071 (1988), which gives district courts the authority to prescribe rules for the conduct of their business, providing such rules do not conflict with Acts of Congress or the rules of practice and procedure that the United States Supreme Court may promulgate for district courts under 28 U.S.C. § 2072 (1988). Federal Rule of Civil Procedure 83 (Rule 83) also authorizes district courts, by majority vote, to make rules that are consistent with the Federal Rules of Civil Procedure. Both § 2071 and Rule 83 provide for public notice and an opportunity to comment before the district courts finally adopt such rules. Compare 28 U.S.C. § 2071(e) (1988) (permitting public notice and comment after a district court adopts a rule, if the district court determines that the rule is needed immediately).

The United States District Court for the District of Minnesota appointed the Advisory Committee (the Committee) pursuant to 28 U.S.C. § 2077(b) (1988) (requiring

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<sup>1</sup>Sidney Abramson was a member of the Advisory Committee until his death on August 27, 1994.

an advisory committee for rules promulgated under § 2071). The members of the 1989-90 Advisory Committee were:

Mr. Clifford M. Greene, Chair  
Mr. Sidney Abramson  
The Honorable Donald D. Alsop  
Mr. Elam Baer  
Mr. Glenn Baskfield  
The Honorable David S. Doty  
Mr. John B. Gordon  
Mr. Mark Hallberg  
Mr. Eric Janus

Mr. Jeffrey Keyes  
Mr. George Koeck  
Mr. Douglas R. Peterson  
Ms. Denise Reilly  
The Honorable Robert G. Renner  
Mr. Daniel M. Scott  
Ms. Janice M. Symchych  
Mr. Mark P. Wine

Mr. Francis E. Dosal, the Clerk of the United States District Court for the District of Minnesota, also participated as an ex officio member of the committee.

Professor Roger C. Park of the University of Minnesota Law School was the Reporter for the Advisory Committee. Barbara Podlucky Berens, J.D. (1990) from the University of Minnesota Law School, served as Research Assistant to the Advisory Committee.

In revising the Local Rules for the District of Minnesota, the Advisory Committee considered the treatise and other materials provided by the Local Rules Project, a study of local district rules conducted under the auspices of the Committee on Rules of Practice and Procedure of the United States Judicial Conference (the Project). The Committee adopted the uniform numbering system recommended by the Project. Local Rules Project, Comm. on Rules of Practice and Procedure, Judicial Conference of the U.S., Treatise, item 2 (1989). This uniform system follows the one already used for the Federal Rules of Civil Procedure. For example, the new local rule which requires a formal motion for extending a pretrial schedule is numbered Local Rule 16.3, corresponding to the federal rule concerning pretrial scheduling, Rule 16, Federal Rules of Civil Procedure. The Project emphasized that renumbering local rules performs a variety of valuable functions. Uniform numbering will help the bar to locate local rules and related case law more easily, thereby assisting attorneys with multi-district practices. The system also facilitates incorporation of local rules into legal publications and computer research data bases. *Id.*

Following the uniform system, the Committee renumbered and adopted the following rules without significant additional change from the 1987 Local Rules for the District of Minnesota: 4.1 (formerly 18), 4.2 (formerly 10), 6.1 (formerly 2(C)), 7.1 (formerly 4), 16.1 (formerly 3 (A)), 16.2 (formerly 3 (C)), 17.1 (formerly 13), 39.1 (formerly 7), 39.2 (formerly 8), 40.1 (formerly 2(A-B)), 67.1 (formerly 12), 79.1 (formerly 11 (B)), 80.1 (formerly 14, with an addendum from Model Local Rule 80.1), 83.2 (formerly 9), 83.5 (formerly 1 (A-E)), 83.6 (formerly 1 (F)), 83.7 (formerly 1 (G)), 83.8, (formerly 1 (H)), 83.9 (formerly 17), 83.10 (based on a 1989 revised order regarding

sentencing procedures), and 83.11 (formerly the Preface). The Committee renumbered and substantially revised the following 1987 Local Rules for the District of Minnesota: 5.5 (formerly 11), 7.2 (formerly 5), 9.3 (formerly 15), 26.1 (formerly a portion of 3(B)), and 33.1 (formerly a portion on 3(B)).

The Committee also adopted several Model Local Rules proposed by the Local Rules Project. *Id.* item 3. The Project recommended these rules after analyzing various areas of procedure to determine which rules should remain subject to local variation and which areas, primarily technical, would benefit from increased consistency and simplicity resulting from the adoption of model rules. *Id.* item 1, at 9-14; see also Subrin, *The Underlying Assumptions of the Federal Rules of Civil Procedure: Federal Rules, Local Rules, and State Rules: Uniformity, Divergence, and Emerging Procedural Patterns*, 137 U. Pa. L. Rev. 1999, 2019-21 (1989) (consultant to the reporter of the Local Rules Project discussing its methodology and recommendations). Based on the Project's suggestions, the Committee adopted the following Model Local Rules without significant change: 3.1, 5.1, 5.2, 9.1, 15.1, 23.1, 24.1, 37.2, 38.1, 67.3, and 71A.1. The Committee also adopted with modifications Model Local Rules 1.1, 1.3, and 37.1.

The Local Rules Project also identified possible inconsistencies between existing local rules of the Federal District Courts and the Federal Rules of Civil Procedure. *Treatise*, *supra* item 1, at 9-14; item 4. In recommending the retention or promulgation of particular local rules in light of the Project's suggestions about inconsistencies, the Advisory Committee adopted the view that the district courts have authority to supplement the Federal Rules of Civil Procedure with local rules establishing procedures and procedural limits not provided for in the national rules, as long as the local rules do not directly contradict the national rules. In cases in which particular local rules, such as the limit on the number of interrogatories, have served well in local practice, the Advisory Committee was reluctant to draw negative implications from the absence of specific limits in the national rules. Therefore, although the Advisory Committee took into account the views of the Local Rules Project that certain local rules were "possibly inconsistent" with the national rules, *id.* item 4, it often decided that no inconsistency existed and that the local rule should be retained. This view of the nature of local rule making is supported by the Supreme Court's decision in *Colgrove v. Battin*, 413 U.S. 149, 163-64 (1973). In *Colgrove*, the Court examined the validity of a local rule promulgated by the United States District Court for the District of Montana which permitted a six-member jury in civil trials. *Id.* at 149-50. The petitioner argued that the rule was invalid, relying in part upon implications the petitioner drew from Federal Rule of Civil Procedure 48, which provides that parties may stipulate to a jury of less than twelve. *Id.* at 151. The petitioner reasoned that because the federal rule specifically permitted parties to stipulate to a jury of less than twelve, by negative implication, the local district rule could not impose a mandatory number of less than twelve. The Supreme Court rejected this argument and upheld the local rule. *Id.* at 163-64; cf. Keeton, *The Function of Local Rules and the Tension with Uniformity*, 50 U. Pitt. L. Rev. 853 (1989).

The Committee further adopted various rules proposed by Minnesota Judges and attorneys. Several significant changes were made in the local rules on the basis of these suggestions. Local Rule 16.3 requires a formal motion for extending a pretrial schedule set under Federal Rule of Civil Procedure 16. Local Rule 47.2 prohibits contact with jurors during their term of service. Local Rule 48.1 allows Judges to empanel juries of more than six in civil cases and to permit all empaneled jurors to deliberate. Local Rule 54.3 permits Judges, in their discretion, to recognize a good-cause exception to the existing local rule (Local Rule 6) which requires attorneys to file applications for attorney's fees within thirty days after judgment. Finally, Local Rule 72.1 (formerly 16) establishes a briefing schedule for appeals from Magistrate Judges' orders.

The Committee believes that the revised Local Rules for the District of Minnesota incorporate various recommendations of Minnesota Judges and attorneys and remedy some of the concerns addressed by the Local Rules Project, while retaining existing rules which have served well in local practice.

## LR 1.1 SCOPE OF THE RULES

(a) **Title and Citation.** These are the Local Rules of the United States District Court for the District of Minnesota. They may be cited as "LR \_\_\_" or "D. Minn. LR \_\_\_."

(b) **Effective Date.** These rules are effective as of May 1, 2000.

(c) **Scope of Rules.** These rules apply in all civil and criminal actions, but not actions in bankruptcy court.

(d) **Relationship to Prior Rules; Actions Pending on Effective Date.** These rules supersede all previous rules promulgated by the court or any of its judges. Ordinarily, these rules apply to actions pending as of their effective date. But if applying these rules to pending actions would be unjust or not feasible, the previously applicable rules govern.

(e) **Rule of Construction.** These rules must be construed in accordance with 1 U.S.C. §§ 1-5.

[Adopted effective February 1, 1991; amended November 1, 1996; amended December 1, 2009; amended January 31, 2011]

### 2011 Advisory Committee's Note to LR 1.1(f)

The language of LR 1.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Subsection (f) was deleted from the rule as redundant of Fed. R. Civ. P. 6.

### 2009 Advisory Committee's Note to LR 1.1(f)

In 2009, Fed. R. Civ. P. 6(a) was amended to eliminate the different methods of counting that depended on whether a period was more or less than 11 days. Similar changes were made to the Federal Rules of Criminal Procedure, Federal Rules of Appellate Procedure, and the Federal Bankruptcy Rules. A portion of Local Rule 1.1(f) (addressing how to compute a due date when "counting backward") has been eliminated because it was no longer needed in light of the new Federal Rule of Civil Procedure 6(a) that defines "next day" both in the context of counting forward and counting backward. Until these 2009 Amendments to the Federal Rules, Fed. R. Civ. P. 6(a) was silent with respect the meaning of "next day."

Under the amended rules, all days are counted regardless of whether any of them are Saturdays, Sundays, or legal holidays, and regardless of whether the period to be counted is more or less than 11 days. The Federal Rules by their express terms apply to computing due dates under the local rules of district courts as well as to computing due dates under the Federal Rules of procedure.

### **1991 Advisory Committee's Note to LR 1.1(f)**

[The Committee has eliminated the text of the 1991 Advisory Committee's Note to this Rule so as to avoid any confusion it might cause, as it was addressed to an entirely different way of computing due dates. Similar changes were made in 2009 to other Local Rules and Forms that included a deadline computed by counting days from a given event.]

### **LR 1.3 SANCTIONS**

If an attorney, law firm, or party violates these rules or is responsible for a rule violation, the court may impose appropriate sanctions as needed to protect the parties and the interests of justice. Potential sanctions include, among other things, excluding evidence, preventing a witness from testifying, striking pleadings or papers, refusing oral argument, or imposing attorney's fees.

[Adopted effective February 1, 1991; amended July 23, 2012]

### **2012 Advisory Committee's Note to LR 1.3**

The language of LR 1.3 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments. For the sake of both clarity and consistency with Fed. R. Civ. P. 11(c)(1), LR 1.3 now specifies that it applies to "an attorney, law firm, or party." This is not a substantive change.

### **LR 3.1 CIVIL COVER SHEET**

A completed civil cover sheet must accompany every document initiating a civil action. Parties must use blank cover sheets that are available from the clerk. Because the cover sheet is solely for administrative purposes, matters appearing only on the cover sheet have no legal effect.

If a party files a case-initiating document without a completed civil cover sheet, the clerk must indicate on the document when it was received and must promptly notify the party of the missing cover sheet. When the party completes the civil cover sheet and provides it to the clerk, the clerk must file the case-initiating document as of the date it was received.

[Adopted effective February 1, 1991; amended July 23, 2012]

### **2012 Advisory Committee's Note to LR 3.1**

The language of LR 3.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface.

### **1991 Advisory Committee's Note to LR 3.1**

On the use of the civil cover sheet for notification of a claim of unconstitutionality, see LR 24.1.

The Committee considered the question whether the rule that “matters appearing only on the civil cover sheet have no legal effect” might be too harsh in a situation in which a pro se litigant claims jury trial only on the civil cover sheet. It decided that the discretion of the trial Judge to grant a jury trial under Fed. R. Civ. P. 39 was sufficient to protect against unfairness.

## **LR 4.1 SERVICE**

The United States Marshals Service is not required to serve civil process for litigants, except as required by the Federal Rules of Civil Procedure or by federal law, or as ordered by the court for good cause. A consenting sheriff or deputy sheriff of any Minnesota county acting within his or her jurisdiction is hereby specially appointed to serve, execute, or enforce civil process that is subject to Fed. R. Civ. P. 4.1.

[Adopted effective November 1, 1996; amended May 1, 2000; amended July 23, 2012]

### **2012 Advisory Committee’s Note to LR 4.1**

The language of LR 4.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee’s Preface on Stylistic Amendments.

### **1996 Advisory Committee’s Note to LR 4.1**

LR 4.1 has been amended to conform to the Federal Rules of Civil Procedure and to eliminate portions that merely repeated those National Rules. LR 4.1 does not modify the National Rules, except to emphasize that a party must show good cause to obtain a Court order requiring that the United States Marshal’s Service serve process.

Federal Rule of Civil Procedure 4(c) allows a summons and complaint to be served by any nonparty who is at least 18 years of age, and relieves the United States Marshal’s Service of any duty to serve the summons and complaint. The Court is required, however, to appoint a Marshal, Deputy Marshal, or other person to serve a summons and complaint when the plaintiff is “authorized to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 or is authorized to proceed as a seaman under 28 U.S.C. § 1916.”

Fed. R. Civ. P. 4(c) also provides that the Court has discretion to appoint a Deputy Marshal or other person to effect service of process. An example of a situation in which a litigant could reasonably seek special appointment of a Deputy Marshal to make service is one in which an enforcement presence is required, such as a temporary restraining order, injunction, attachment, arrest, or order relating to a judicial sale.

For procedure on execution, see Fed. R. Civ. P. 69, which requires that state procedures on execution be followed unless a statute of the United States provides otherwise. Nothing in this rule is intended to modify the obligation of the U.S. Marshals Service to execute process issued under the authority of the District Court.

## **LR 4.2 FEES**

### **(a) Collection in Advance.**

(1) *General Rule.* Ordinarily, the clerk must collect in advance statutory fees associated with the institution or prosecution of any action. The clerk must deposit and account for those fees in accordance with directives of the Administrative Office of the United States Courts. The clerk is not required to collect fees in advance when a party seeks to proceed in forma pauperis in accordance with LR 4.2(a)(2).

(2) *Proceedings in Forma Pauperis.* If a party seeks to proceed in forma pauperis, the party must present to the clerk the complaint or other case-initiating document and an application to proceed in district court without prepaying fees or costs. The clerk must file the case-initiating document as if the filing fee had been paid and must submit the application to the court.

**(b) Nonpayment.** If a party has failed to pay costs or fees owed to and demanded by the clerk or the United States marshal, the clerk or marshal must inform the court of the party's failure to pay. The court may order the party to show cause why the court should not require immediate payment of the unpaid costs or fees.

**(c) Refusal to File by Clerk.** The clerk may refuse to file anything submitted by a party until the party has paid all fees owed to the clerk, unless:

(1) the party's application for in forma pauperis status — that is, to proceed in district court without prepaying fees or costs — either is pending or has been granted;

(2) the party is an inmate in state custody and is filing a petition for habeas corpus under 28 U.S.C. § 2254; or

(3) the clerk is otherwise prohibited by federal law from doing so.

**(d) Retaining Possession until Fees Are Paid.** When the marshal or any other officer of the court possesses, or may possess, any document relating to a service on a party's behalf, the officer may retain possession of the document until the party has paid all required service-related fees.

[Adopted effective February 1, 1991; amended July 23, 2012]

#### **2012 Advisory Committee's Note to LR 4.2**

The language of LR 4.2 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

In subsection (a)(2), the phrase "motion for permission to proceed in forma pauperis" has been replaced with the phrase "application to proceed in district court without prepaying fees or costs," as this is the actual title of the form available from the clerk's office. The phrase "in forma pauperis" is simply

Latin for “as a poor person.” For historical reasons, the phrase “in forma pauperis” has been retained in portions of rule’s text, but in practice, a party who is permitted to proceed “in forma pauperis” is simply permitted to proceed without prepaying certain fees or costs.

Also in subsection (a)(2), the following sentence was deleted: “If permission to proceed in forma pauperis is later denied, the complaint shall be stricken.” This sentence did not reflect the court’s actual practice. In fact, if the court denies a party’s application to proceed without prepaying fees or costs, the court gives the party an opportunity to pay those fees or costs before the court strikes the party’s complaint.

Subsection (c) has been expanded to itemize the situations in which the clerk must file documents submitted by a party even when that party owes fees to the clerk.

## **LR 5.1 ELECTRONIC CASE FILING**

**(a)** Electronic case filing is authorized in accordance with Fed. R. Civ. P. 5(d)(3). The standards and procedures governing electronic case filing are set forth in the civil and criminal Electronic Case Filing Procedures Guides (collectively, “ECF Guides”) adopted most recently by the court. The ECF Guides govern all civil and criminal actions, but not actions in bankruptcy court. The most recent ECF Guides are available from the clerk.

**(b)** All documents must be filed electronically, except as otherwise provided by these rules, by court order, or by the ECF Guides.

**(c)** The ECF Guides do not alter the rules about computing deadlines set forth in Fed. R. Civ. P. 6(a).

[Adopted effective February 1, 1991; amended November 1, 1996; amended January 3, 2000; amended May 17, 2004 - formerly titled GENERAL FORMAT OF PAPERS PRESENTED FOR FILING; amended January 31, 2011]

### **2011 Advisory Committee’s Note to LR 5.1**

The language of LR 5.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee’s Preface on Stylistic Amendments.

The most recent ECF Guides are available on the court’s website.

## **LR 5.2 GENERAL FORMAT OF DOCUMENTS TO BE FILED**

**(a)** Except as provided in LR 5.2(b), all documents filed must be typewritten, printed, or prepared by a clearly legible duplication process. Document text must be double-spaced, except for quoted material and footnotes, and pages must be numbered consecutively at the bottom. Documents filed after the case-initiating document must contain—on the front page and above the document’s title—the case number and the name or initials of the assigned district judge and magistrate judge.

**(b)** LR 5.2(a) does not apply: (1) to exhibits; and (2) in removed actions, to documents filed in state court before removal.

**(c)** Documents filed by an attorney must include the attorney's registration number.

[Adopted effective January 3, 2000; amended May 17, 2004; amended January 31, 2011]

#### **2011 Advisory Committee's Note to LR 5.2**

The language of LR 5.2 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Subsection (c). Attorneys who are licensed in Minnesota must provide their Minnesota license number as their attorney-registration number. Attorneys who are admitted pro hac vice and licensed in a state other than Minnesota must provide the state of licensure and the license number as their attorney-registration number.

### **LR 5.3 TIME FOR FILING AFTER SERVICE**

Any paper required by Fed. R. Civ. P. 5(d)(1) to be filed must be filed within 14 days after service. This 14-day period is a "reasonable time" under Fed. R. Civ. P. 5(d)(1).

[Adopted effective February 1, 1991; amended numbering May 17, 2004; amended December 1, 2009; amended July 23, 2012]

#### **2012 Advisory Committee's Note to LR 5.3**

The language of LR 5.3 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments. A cross-reference to LR 1.3 was eliminated as superfluous, and not for any substantive reason.

### **LR 5.4 SERVICE OF DOCUMENTS THROUGH THE COURT'S ELECTRONIC TRANSMISSION FACILITIES**

A party may serve a paper under Fed. R. Civ. P. 5(b)(2)(E) by using the court's electronic transmission facilities in accordance with the court's most recent ECF Guides. If a document is served electronically, the notice of electronic filing generated by the court's electronic transmission facilities constitutes a certificate of service with respect to those persons to whom electronic notice of the filing is sent, and no separate certificate of service need be filed with respect to those persons.

[Adopted effective May 17, 2004; amended January 31, 2011]

#### **2011 Advisory Committee's Note to LR 5.4**

The language of LR 1.3 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Local Rule 5.4 is amended to no longer require the filing of a separate certificate of service if service was conducted electronically through the court's electronic transmission facilities (ECF). When service is conducted electronically, the notice of electronic filing (NEF) may serve as the certificate of service to comply with Fed. R. Civ. P. 5(d)(1).

#### **2004 Advisory Committee Note to LR 5.4**

The 2001 Amendments to the Federal Rules of Civil Procedure permitted district courts to authorize service by electronic means "through the court's transmission facilities." Fed.R.Civ.P. 5(b)(2)(D). Accordingly, new Local Rule 5.4 explicitly authorizes service by electronic means via the court's electronic filing facilities.

The 2001 Amendments also provided that the additional three days established in Rule 6(e) for service by mail applies to service by electronic means. Fed.R.Civ.P. 6(e).

Counsel are encouraged to consult the electronic service provisions of the Federal Rules of Civil Procedures, as amended in 2001. LR 5.4 does not modify the Federal Rules in any way.

Counsel are encouraged, further, to consult the most recently adopted version of the Electronic Filing Procedures for the District of Minnesota for further clarification on administrative procedures for filing and serving by electronic means.

#### **LR 5.5 REDACTION OF TRANSCRIPTS**

**(a) Review of Transcript for Personal Identifiers.** After a transcript of any court proceeding has been filed under LR 80.1(a), a party's attorney — including an attorney serving as "standby" counsel for a pro se defendant in a criminal case — and an unrepresented party must each determine whether any personal identifiers in the transcript must be redacted to comply with Fed. R. Crim. P. 49.1 or Fed. R. Civ. P. 5.2. Unless otherwise ordered by the court, a party's attorney and an unrepresented party must each request redaction of personal identifiers in the following transcript portions:

- (1) Statements by the party or made on the party's behalf;
- (2) The testimony of any witness called by the party; and
- (3) Sentencing proceedings.

**(b) Notice of Intent to Request Redaction.** If any portion of a transcript must be redacted to comply with Fed. R. Crim. P. 49.1 or Fed. R. Civ. P. 5.2, the attorney or unrepresented party who reviewed the transcript must file a Notice of Intent to Request Redaction within 7 days after the transcript was filed.

**(c) Statement of Redaction.** After filing a Notice of Intent to Request Redaction, an attorney or unrepresented party must file a Statement of Redaction within

21 days after the transcript was filed. The Statement of Redaction must not disclose the personal identifier to be redacted. Rather, the Statement of Redaction must specify:

- (1) The type of personal identifier to be redacted — for example, “social security number”;
- (2) The transcript page and line number where the personal identifier to be redacted appears; and
- (3) How the transcript should read after redaction — for example, “social security number should read XXX-XX-1234.”

**(d) Redacted Transcript.** After the Statement of Redaction is filed, the court reporter must file the redacted transcript within 31 days after the original transcript was filed. The court reporter must not charge any fees for redaction.

**(e) Extensions of Transcript Redaction Deadlines.** The deadlines in LR 5.5 may be extended only by court order. If an attorney or unrepresented party files a timely Notice of Intent to Request Redaction but then fails to file a timely Statement of Redaction, the attorney or party must either withdraw the notice or file a motion to request redaction. The court may order an attorney or unrepresented party to show cause why he or she has not complied with LR 5.5.

**(f) Roles of the Court and the Parties.** The court does not review transcripts to assess whether personal identifiers should be redacted. Attorneys and unrepresented parties must do so themselves.

[Adopted effective May 12, 2008; amended August 11, 2008; amended December 1, 2009; amended July 23, 2012]

#### **2012 Advisory Committee’s Note to LR 5.5**

The language of LR 5.5 has been amended in accordance with the restyling process described in the 2012 Advisory Committee’s Preface on Stylistic Amendments.

New subsection (f), “Roles of the Court and the Parties,” reflects — in more direct language — the substance of the last sentence of former subsection (b). Subsection (f) does not reflect a substantive change.

### **LR 6.1 CONTINUANCE**

**(a) General Rule.** Ordinarily, a party who seeks a continuance must show good cause. But a party who seeks a continuance because of the absence of an expert witness must show extreme good cause. Parties must anticipate the possibility that an expert witness may be unavailable and must be prepared to present expert-witness

testimony either by deposition or by stipulation among the parties that the expert witness's written report may be received in evidence.

**(b) Trial Dates.** A party who seeks continuance of a trial date must move for a continuance in writing.

[Adopted effective February 1, 1991; amended July 23, 2012]

#### **2012 Advisory Committee's Note to LR 6.1**

The language of LR 6.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

### **LR 7.1 CIVIL MOTION PRACTICE**

**(a) Meet-and-Confer Requirement.** Before filing a motion other than a motion for a temporary restraining order or a motion under Fed. R. Civ. P. 56, the moving party must, if possible, meet and confer with the opposing party in a good-faith effort to resolve the issues raised by the motion. The moving and opposing parties need not meet in person.

*(1) Meet-and-Confer Statement.*

(A) Filing. Ordinarily, the moving party must file a meet-and-confer statement together with the motion that it relates to. But if the opposing party was unavailable to meet and confer before the moving party files its motion, the moving party must promptly meet and confer with the opposing party after filing the motion and must supplement the motion with a meet-and-confer-statement.

(B) Contents. The meet-and-confer statement must:

(i) certify that the moving party met and conferred with the opposing party; and

(ii) state whether the parties agree on the resolution of all or part of the motion and, if so, whether the agreed-upon resolution should be included in a court order.

*(2) Subsequent Agreement of the Parties.* After the moving party has filed a meet-and-confer statement, if the moving and opposing parties agree on the resolution of all or part of the motion that the statement relates to, the parties must promptly notify the court of their agreement by filing a joint stipulation.

**(b) Nondispositive Motions.** Unless the court orders otherwise, all nondispositive motions must be heard by the magistrate judge. Before filing a nondispositive motion, a party must contact the magistrate judge's courtroom deputy to schedule a hearing. After a party obtains a hearing date, the parties may jointly request that the hearing be canceled. If the court cancels the hearing — whether at the parties' joint request or on its own — the parties must nonetheless file and serve their motion papers by the deadlines that would have applied if the hearing had not been canceled.

(1) *Moving Party; Supporting Documents; Time Limits.* At least 14 days before the date of a hearing on a nondispositive motion, the moving party must simultaneously:

(A) file and serve the following documents:

(i) motion;

(ii) notice of hearing;

(iii) memorandum of law;

(iv) any affidavits and exhibits; and

(v) meet-and-confer statement, unless later filing is permitted under LR 7.1(a)(1)(A); and

(B) provide to chambers and serve a proposed order.

(2) *Responding Party; Supporting Documents; Time Limits.* Within 7 days after filing of a nondispositive motion and its supporting documents under LR 7.1(b)(1), the responding party must file and serve the following documents:

(A) memorandum of law; and

(B) any affidavits and exhibits.

(3) *Reply Memorandum.* Except with the court's prior permission, a party must not file a reply memorandum in support of a nondispositive motion.

(4) *Applicability of this Subsection.*

(A) Nondispositive motions covered by this subsection include, for example:

- (i) motions to amend pleadings;
- (ii) motions with respect to third-party practice;
- (iii) discovery-related motions;
- (iv) motions related to joinder and intervention of parties;  
and
- (v) motions to conditionally certify a case as a collective action.

(B) This subsection does not apply to:

- (i) nondispositive motions that are treated as dispositive motions under LR 7.1(c)(6); or
- (ii) post-trial and post-judgment motions.

**(c) Dispositive Motions.** Unless the court orders otherwise, all dispositive motions must be heard by the district judge. Before filing a dispositive motion, a party must contact the district judge's courtroom deputy. The courtroom deputy will either schedule a hearing or instruct the party when to file its motion and supporting documents. If a hearing is scheduled, the parties may jointly request that the hearing be canceled. If the court cancels the hearing — whether at the parties' joint request or on its own — the parties must nonetheless file and serve their motion papers by the deadlines that would have applied if the hearing had not been canceled.

*(1) Moving Party; Supporting Documents; Time Limits.* At least 42 days before the date of a hearing on a dispositive motion — or, if no hearing has been scheduled, as instructed by the courtroom deputy — the moving party must simultaneously:

(A) file and serve the following documents:

- (i) motion;
- (ii) notice of hearing;
- (iii) memorandum of law;
- (iv) any affidavits and exhibits; and

(v) meet-and-confer statement, if required under LR 7.1(a), unless later filing is permitted under LR 7.1(a)(1)(A); and

(B) provide to chambers and serve a proposed order.

(2) *Responding Party; Supporting Documents; Time Limits.* Within 21 days after filing of a dispositive motion and its supporting documents under LR 7.1(c)(1), the responding party must file and serve the following documents:

(A) memorandum of law; and

(B) any affidavits and exhibits.

(3) *Reply Memorandum.*

(A) Within 14 days after filing of a response to a dispositive motion, the moving party must either:

(i) file and serve a reply memorandum; or

(ii) file and serve a notice stating that no reply will be filed.

(B) A reply memorandum must not raise new grounds for relief or present matters that do not relate to the opposing party's response.

(4) *Multiple Summary Judgment Motions.* For purposes of the word and line limits in LR 7.1(f), multiple motions for full or partial summary judgment filed by a party at or about the same time will be considered a single motion.

(5) *Motion Hearing or Other Resolution.*

(A) On Court's Initiative. At any time after a party files a dispositive motion and the motion's supporting documents, the court may:

(i) schedule a hearing (if no hearing was initially scheduled)

(ii) reschedule a hearing;

- (iii) refer the motion to a magistrate judge; or
- (iv) cancel a hearing and notify the parties that the motion will be otherwise resolved.

(B) At a Party's Request. If a district judge has not scheduled a hearing on a dispositive motion, the moving or opposing party may file a letter of no more than two pages requesting that a hearing be scheduled. Such a request must be made no sooner than 14 days after the moving party has filed its reply or its notice that a reply will not be filed. This rule authorizes the parties to file those letters by ECF.

(6) *Applicability of this Subsection.* The following motions are considered dispositive motions under LR 7.1:

- (A) motions for injunctive relief;
- (B) motions for judgment on the pleadings, to dismiss, or for summary judgment;
- (C) motions to certify a class action;
- (D) motions to exclude experts under Fed. R. Evid. 702 and *Daubert*.

**(d) Motions for Emergency Injunctive Relief.**

(1) The following motions are considered motions for emergency injunctive relief:

- (A) motions for a temporary restraining order; and
- (B) preliminary-injunction motions that require expedited handling.

(2) Before filing a motion for emergency injunctive relief, the moving party must contact the judge's courtroom deputy to obtain a hearing date and briefing schedule.

(3) A motion for a temporary restraining order must be filed in accordance with LR 7.1(c)(1)(A), but the moving party is not required to file a meet-and-confer statement with the motion..

(4) A preliminary-injunction motion that requires expedited handling must:

- (A) make the request for expedited handling in the motion; and
- (B) be filed in accordance with LR 7.1(c)(1)(A).

**(e) Post-trial and Post-judgment Motions.** A post-trial or post-judgment motion that is filed within the applicable time period set forth in the Federal Rules of Civil Procedure may be made to the judge before whom the case was heard. After filing the motion, the moving party must contact the judge's courtroom deputy to obtain a briefing schedule.

**(f) Word or Line Limits; Certificate of Compliance.**

(1) *Word or Line Limits.*

(A) Except with the court's prior permission, a party's memorandum of law must not exceed 12,000 words if set in a proportional font, or 1,100 lines of text if set in a monospaced font.

(B) If a party files both a supporting memorandum and a reply memorandum, then, except with the court's prior permission, the two memoranda together must not exceed 12,000 words if set in a proportional font, or 1,100 lines of text if set in a monospaced font.

(C) All text — including headings, footnotes, and quotations — counts toward these limits, except for:

- (i) the caption designation required by LR 5.2;
- (ii) the signature-block text; and
- (iii) certificates of compliance.

(D) A party who seeks to exceed these limits must first obtain permission to do so by filing and serving a letter of no more than two pages requesting such permission. A party who opposes such a request may file and serve a letter of no more than two pages in response. This rule authorizes the parties to file those letters by ECF.

(2) *Certificate of Compliance.* A memorandum of law must be accompanied by a certificate executed by the party's attorney, or by an unrepresented party, affirming that the memorandum complies with the

limits in LR 7.1(f) and with the type-size limit of LR 7.1(h). The certificate must further state how many words (if set in a proportional font) or how many lines (if set in a monospaced font) the memorandum contains. A reply memorandum must be accompanied by a certificate that says how many words or lines are contained, cumulatively, in the supporting memorandum and the reply memorandum. The person preparing the certificate may rely on the word-count or line-count function of his or her word-processing software only if he or she certifies that the function was applied specifically to include all text, including headings, footnotes, and quotations. The certificate must include the name and version of the word-processing software that was used to generate the word count or line count.

**(g) Failure to Comply.** If a party fails to timely file and serve a memorandum of law, the court may:

- (1) cancel the hearing and consider the matter submitted without oral argument;
- (2) reschedule the hearing;
- (3) hold a hearing, but refuse to permit oral argument by the party who failed to file;
- (4) award reasonable attorney's fees to the opposing party;
- (5) take some combination of these actions; or
- (6) take any other action that the court considers appropriate.

**(h) Type Size.**

(1) *Represented Parties.* A memorandum of law filed by a represented party must be typewritten. All text in the memorandum, including footnotes, must be set in at least font size 13 (i.e., a 13-point font) as font sizes are designated in the word-processing software used to prepare the memorandum. Text must be double-spaced, with these exceptions: headings and footnotes may be single-spaced, and quotations more than two lines long may be indented and single-spaced. Pages must be 8 ½ by 11 inches in size, and no text — except for page numbers — may appear outside an area measuring 6 ½ by 9 inches.

(2) *Unrepresented Parties.* A memorandum of law filed by an unrepresented party must be either typewritten and double-spaced or, if handwritten, printed legibly.

(i) **Unsolicited Memoranda of Law.** Except with the court's prior permission, a party must not file a memorandum of law except as expressly allowed under LR 7.1.

(j) **Motion to Reconsider.** Except with the court's prior permission, a party must not file a motion to reconsider. A party must show compelling circumstances to obtain such permission. A party who seeks permission to file a motion to reconsider must first file and serve a letter of no more than two pages requesting such permission. A party who opposes such a request may file and serve a letter of no more than two pages in response. This rule authorizes the parties to file those letters by ECF.

(k) **Citing Judicial Dispositions.** If a judicial opinion, order, judgment, or other written disposition cited by a party is available in a publicly accessible electronic database, the party is not required to file and serve a copy of that document. But if a judicial opinion, order, judgment, or other written disposition cited by a party is not available in a publicly accessible electronic database, the party must file and serve a copy of that document as an exhibit to the memorandum in which the party cites it.

**(l) Affidavits and Exhibits; Proposed Orders.**

(1) *Affidavits and Exhibits.* Parties must not file affidavits or exhibits as attachments to a memorandum that they support. Instead, such affidavits and exhibits must be filed separately. Exhibits must be accompanied by an index — either in the form of a supporting affidavit or of a separate title page — that identifies the exhibits.

(2) *Proposed Orders.* Parties must not file proposed orders on the court's ECF system. Instead, proposed orders must be emailed to chambers and served in accordance with the procedures set forth in the court's most recent civil ECF Guide.

[Adopted effective February 1, 1991; amended November 1, 1996; amended January 3, 2000; amended January 1, 2004; amended May 17, 2004; amended May 16, 2005; amended September 24, 2009; amended December 1, 2009; amended July 23, 2012]

**2012 Advisory Committee's Note to LR 7.1**

The language of LR 7.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Local Rule 7.1 has been reorganized to add subsections (a) Meet-and-Confer Requirement and (d) Motions for Emergency Injunctive Relief.

Under new LR 7.1(a), parties must meet and confer with the opposing party before filing any civil motion, except a motion for a temporary restraining order or a motion under Fed. R. Civ. P. 56, and file a meet-and-confer statement with the motion. Parties must file a joint stipulation if the parties agree on the resolution of all or part of the motion after the meet-and-confer statement is filed.

Rule 7.1(b) and (c), former LR 7.1(a)-(b), have been amended to clarify that parties should file motions and supporting documents simultaneously, rather than filing a motion first and its supporting documents later. In addition, the method of calculating deadlines for response briefs and (for dispositive motions) reply briefs has been changed. Deadlines for such briefs are now based on the filing date of the moving party's motion and supporting documents, rather than on the hearing date. Parties now have 14 days to prepare a reply brief for a dispositive motion, rather than the 7 days previously provided.

Rule 7.1(b)(4) was added to identify the types of motions that are considered nondispositive under LR 7.1.

Rule 7.1(c) has also been amended to better reflect the practices of different district judges with respect to scheduling hearings on dispositive motions. These amendments are not intended to change the long-established practice in this district of holding hearings for important civil motions, such as motions for summary judgment.

Rule 7.1(d) was added to provide guidance on filing motions for emergency injunctive relief.

Rule 7.1(e), former LR 7.1(c), was amended to clarify that after filing a timely post-trial or post-judgment motion, the moving party must contact the judge's courtroom deputy to obtain a briefing schedule.

### **2009 Advisory Committee's Note to LR 7.1**

A number of noteworthy changes have been made to Local Rule 7.1. Generally, the changes were intended to clarify uncertainties or gaps in the rules. The most significant changes and clarifications include the following:

1. Parties are required to secure a hearing date **before** filing any motion papers. LR 7.1(a) and (b).
2. A mechanism is provided to compute the briefing and submission schedules if the motion ultimately is submitted without a hearing. LR 7.1(a) and (b).
3. The rule makes explicit that motions to exclude expert testimony under *Daubert* and Fed. R. Evid. 702 are treated as dispositive motions. LR 7.1(b).
4. A reply brief generally is not permitted in connection with non-dispositive motions, LR 7.1(a)(1), and, with respect to dispositive motions, a reply brief must not raise new issues or go beyond the issues raised in the response brief to which it replies. LR 7.1(b)(3).

5. A new subdivision has been added to make it clear that a single word limit applies whether a party files a single summary judgment motion (or motion for partial summary judgment) or several such motions at or about the same time. LR 7.1(b)(4).
6. Requests to enlarge word limits must be made in writing — and permission must be obtained — **before** filing a brief exceeding the word limit. LR 7.1(d).
7. The Court has access to commercial databases maintained by legal research services, as well as to databases maintained by courts; parties need not attach unpublished opinions to briefs if those opinions are available on a publicly-accessible electronic database. LR 7.1(i).
8. A new subdivision governing post-trial and post-judgment motions has been added. LR 7.1(c).

The amended rule also includes additional clarifying language about how to calculate certain deadlines and about the Court's ECF procedures.

#### **2004 Advisory Committee's Note to LR 7.1(b)**

Rule 7.1(b) was amended effective January 1, 2004, to set forth the District Judges' requirements for dispositive motions. This amendment replaced the "fully briefed motion" practice that previously had been in effect.

#### **1999 Advisory Committee's Note to LR 7.1(b)(2)**

**Supporting Affidavits.** Rule 7.1(b)(2) specifically contemplates that the factual basis for a dispositive motion will be established with affidavits and exhibits served and filed in conjunction with the initial motion and the responding party's memorandum of law. Although the rule makes provision for a Reply Memorandum, it neither permits nor prohibits the moving party from filing affidavits or other factual material therewith. The rule contemplates that the discovery record will allow the initial summary judgment submission to anticipate and address the responding party's factual claims. Reply affidavits are appropriate only when necessary to address factual claims of the responding party that were not reasonably anticipated. It is improper to withhold information - either from discovery or from initial moving papers - in order to gain an advantage.

#### **1996 Advisory Committee's Note to LR 7.1**

LR 7.1(b) was amended to specify the motions considered to be dispositive motions under this rule. The motions considered dispositive motions under this rule are the matters that, under 28 U.S.C. § 636(b)(1)(A) and (B), may be heard by a Magistrate Judge only for the purpose of making proposed findings of fact and recommendations for the disposition.

#### **1996 Advisory Committee's Note to LR 7.1(b)(2)**

The new Local Rules significantly change procedures governing motion practice. They are patterned after procedures adopted by several judges on an experimental basis.

These reforms reflect the spirit of the 1993 Amendments to the Federal Rules of Civil Procedure. In particular, they enable counsel to structure motion deadlines to accommodate the differing demands of diverse cases. These rules also minimize Court involvement in the process until dispositive motions have

been fully briefed and are ready for hearing. The exchange of briefs may narrow or resolve pending controversies without judicial intervention. By so doing, the rules prevent the expenditure of judicial resources on the controversies which may have become moot at the time of the hearing.

The new rules prescribe deadlines that govern motion practice if counsel cannot agree on a briefing schedule. The new rules also enlarge the briefing periods for briefs responding to motions and for reply briefs. This revision is intended to reduce any unfair advantage favoring the moving party (who may have been preparing the motion for a much longer period than the opponent is afforded for reply). The enlarged deadline for service of Reply Briefs reflects the Committee's consensus that former deadlines often imposed time constraints which undermined the quality of the Reply. These briefing deadlines involve "calendar days," not "business days."

#### **1991 Advisory Committee's Note to LR 7.1**

See LR 1.1(f) for the method of computing time.

See LR 37.2 for the form of discovery motions.

### **LR 7.2 PROCEDURES IN SOCIAL SECURITY CASES**

#### **(a) Filing an Answer.**

(1) Within 60 days after the United States is served with a pleading under 42 U.S.C. § 405(g), the Commissioner of Social Security must file and serve an answer and a certified copy of the administrative record.

(2) If the Commissioner seeks an extension of time to answer, the Commissioner must move for the extension before the end of the 60-day period set forth in LR 7.2(a)(1).

#### **(b) Motions; Time Limits.**

(1) Within 60 days after the Commissioner of Social Security serves the answer and administrative record, the plaintiff must file and serve a summary-judgment motion and a supporting memorandum. Within 45 days after the plaintiff serves its summary-judgment motion, the Commissioner must file and serve a summary-judgment motion and a supporting memorandum. Within 14 days after the Commissioner serves its summary-judgment motion, the plaintiff may file and serve a reply memorandum.

(2) Unless the court orders otherwise, all motions will be decided without oral argument.

(3) If a magistrate judge issues a report and recommendation, a party may object to the report and recommendation in accordance with Fed. R. Civ. P. 72(b), LR 72.2(b), and 28 U.S.C. § 636(b)(1)(B), and the opposing

party may respond to the objecting party in accordance with the same rules and laws. Objections and responses must not exceed the word limit set forth in LR 72.2(b).

**(c) Review After Remand When Courts Retain Jurisdiction.**

(1) If the Commissioner of Social Security's final decision upon remand is adverse to the plaintiff, the Commissioner must file and serve a supplemental administrative record within 60 days after that final decision.

(2) Within 60 days after the Commissioner serves the supplemental administrative record, the plaintiff may file and serve a summary-judgment motion and a supporting memorandum. Within 45 days after the plaintiff serves its summary-judgment motion, the Commissioner must file and serve a summary-judgment motion and a supporting memorandum. Within 14 days after the Commissioner serves its summary-judgment motion, the plaintiff may file and serve a reply memorandum.

**(d) Attorney's Fees under the Social Security Act.**

(1) Petitions for fees under the Social Security Act must be filed within 30 days after the plaintiff's attorney is notified of the Commissioner of Social Security's award certificate.

(2) Petitions for attorney's fees under the Social Security Act or any other authority must be itemized and must be served on the Commissioner. Attorneys are directed to 20 C.F.R. § 404.1725 when preparing their petitions.

[Adopted effective November 1, 1996; amended January 3, 2000; amended May 17, 2004; amended October 18, 2007; amended September 24, 2009; amended December 1, 2009; amended January 31, 2011]

**2011 Advisory Committee's Note to LR 7.2**

The language of LR 7.2 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

LR 7.2(b) corrects an inadvertent inconsistency with the word limits set forth in LR 72.2(b).

The former provisions in LR 7.2(d) describing when motions for attorney's fees under certain laws may be filed are deleted as redundant.

## **2007 Advisory Committee's Note to LR 7.2**

The rule was amended by replacing all references to "Secretary of Health and Human Services" to "Commissioner of Social Security" as referenced in the statute upon which the local rule is based.

## **1996 Advisory Committee's Note to LR 7.2**

LR 7.2(b)(3) was amended to properly refer to "Magistrate Judge" rather than "Magistrate."

LR 7.2(c) was amended so that it applies only to cases remanded under sentence six of 42 U.S.C. § 405(g) where the Court has retained jurisdiction. See Note accompanying LR 7.2(d).

LR 7.2(d)(1): Although this paragraph was not amended, practitioners should be aware that the date which triggers the time for filing a motion or petition for attorney's fees varies in Social Security cases remanded by the Court to the Secretary depending on which sentence of 42 U.S.C. § 405(g) authorized the remand.

In *Melkonyan v. Sullivan*, 501 U.S. 89 (1991), the Supreme Court discussed the time for filing a petition for attorney's fees under the Equal Access to Justice Act (EAJA) in Social Security appeals. The Supreme Court recognized that under 42 U.S.C. § 405(g), a federal district court has the authority to remand a Social Security appeal under two separate and distinct circumstances.

The Court may, under the fourth sentence of § 405(g), "enter a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing." If the Court remands the cause for a rehearing under this sentence, it is referred to as a "sentence four" remand.

The Court may, under the sixth sentence of § 405(g), "on motion for the Secretary made for good cause shown before he files his answer, remand the case to the Secretary for further action by the Secretary, and it may at any time order additional evidence to be taken by the Secretary, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding." These remands are called "sentence six" remands.

When a claim is remanded by the Court under sentence four, the remand is a final decision and the judge's order shall state that a judgment should be entered. The Court does not retain jurisdiction to review the proceedings on remand. In *Shalala v. Schaefer*, 509 U.S. 292 (1993), the Supreme Court held that a claimant becomes a prevailing party by obtaining a sentence-four judgment. The time within which to petition for attorney's fees under the EAJA begins on the date of entry of the final judgment in conjunction with the remand order. If the decision on remand is adverse to the claimant, the claimant must file and serve a new summons and complaint.

When a claim is remanded under sentence six, the Court properly retains jurisdiction until after the administrative proceedings on remand. After the final decision of the Secretary upon remand, the Court must take some further action. If the decision is favorable to the claimant, the Court should issue a final judgment in the claimant's favor. The time within which to petition for attorney's fees under EAJA begins on the date of the entry of the final judgment. If the final decision of the Secretary upon remand is adverse to the claimant, then the procedure set forth in LR 7.2(c)(1) and (2) should be followed.

## LR 7.3 TELEPHONIC HEARINGS

**(a) General Rule; Form of Requests; Arrangements.** The court may allow a telephonic hearing for any pretrial matter.

(1) *Form of request.* A party seeking a telephonic hearing must request the hearing by filing and serving a letter requesting a telephonic hearing and contacting the judge's courtroom deputy after the letter is filed to coordinate the request. This rule authorizes the party to file this letter by ECF.

(2) *Arrangements.* Unless the court directs otherwise, the requesting party must arrange the logistics of the hearing and must communicate the specific arrangements to all parties before the hearing.

(3) *Transcription.* If any party intends to request that the telephonic hearing be transcribed, that party must inform the judge's courtroom deputy at least 24 hours before the hearing.

**(b) Hearings Without Written Notice.** When deposition-related issues can and must be immediately resolved to avoid manifest injustice, the court may hold a telephonic hearing without written notice. Unless otherwise directed by the magistrate judge, a party may request such a hearing only in exigent circumstances. If, in such a hearing, a party or its attorney takes a position wholly unsupported by legal authority, the court may impose the sanctions allowed under Fed. R. Civ. P. 37(b).

[Adopted effective November 1, 1996; amended May 14, 2013]

### 2013 Advisory Committee's Note to LR 7.3

The language of LR 7.3 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Subsection (a) has been revised to clarify that a party must request a telephonic hearing by filing a letter in ECF and follow up that request by contacting the judge's courtroom deputy. Subsection (a)(3) was added to require that parties inform the judge's courtroom deputy if they intend to have the telephonic hearing transcribed. Telephonic hearings for certain nondispositive motions are recorded at the judge's discretion.

Former subsection (b), which related to requesting a transcript of a telephonic hearing, was deleted as unnecessary with the addition of the language in (a)(3).

### 1996 Advisory Committee's Note to LR 7.3

In 1993, the Civil Justice Reform Act Advisory Group recommended the use of cost-efficient measures to reduce the expense of civil pretrial proceedings, including increased use of telephonic appearances. The rule on telephonic hearings is based on strong competing interests, and the effort to appropriately balance those interests. On the one hand, the rule reflects the interest in controlling the

costs and burdens associated with multiple court appearances, and the economies associated with hearings that do not require personal appearances.

On the other hand, the Court's time is a valuable resource which is carefully scheduled. It is in the interests of justice that previously scheduled matters not be disrupted by spontaneous hearing requests, and that parties and counsel previously scheduled to be in Court be allowed the Court's undivided attention. For that reason, the rule provides for spontaneous telephonic hearings only in exigent circumstances when manifest unfairness would otherwise occur. Each judicial officer retains the discretion whether to entertain spontaneous telephonic hearings on a case-by-case basis.

## **LR 9.1 SOCIAL SECURITY NUMBER IN SOCIAL SECURITY CASES**

**(a)** A plaintiff suing the Commissioner of Social Security under 42 U.S.C. § 405(g) must provide, on a separate paper attached to the complaint, the social security number of the worker whose wage record forms the basis of the benefit application underlying the suit. The separate paper containing the worker's social security number must also be served, along with the complaint, on the Commissioner, and the complaint must state that the separate paper was served on the Commissioner. But the complaint will not be dismissed for failure to comply with this rule.

**(b)** The clerk must file the separate paper containing the worker's social security number under seal.

[Adopted effective February 1, 1991; amended September 24, 2009; amended May 14, 2013]

### **2013 Advisory Committee's Note to LR 9.1**

The language of LR 9.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

A new provision, subsection (b), has been added to clarify that the required paper containing the worker's social security number will be filed under seal.

### **1991 Advisory Committee's Note to LR 9.1**

See LR 7.2 for motion practice in Social Security cases.

## **LR 9.3 STANDARD FORMS FOR HABEAS CORPUS PETITIONS AND MOTIONS BY PRISONERS**

The following documents must be filed on forms that are substantially the same as forms available from the clerk:

- petitions for a writ of habeas corpus;
- motions under 28 U.S.C. § 2255; and

- complaints by prisoners under 42 U.S.C. § 1983 or any other civil-rights statute.

[Adopted effective February 1, 1991; amended July 23, 2012]

#### **2012 Advisory Committee's Note to LR 9.3**

The language of LR 9.3 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

#### **1991 Advisory Committee's Note to LR 9.3**

This rule modifies former D. Minn. Local Rule 15 (1987). The requirement that the pleadings be "in writing, signed and verified" was deleted on grounds that it was duplicative of the requirements of 28 U.S.C. § 2254 and, to some extent, Fed.R.Civ.P. 11. The rule only requires "substantial compliance" with forms supplied by the Clerk of Court in recognition of the fact that the Supreme Court and Congress have generally avoided strict compliance with forms submitted by pro se petitioners.

### **LR 15.1 AMENDED PLEADINGS AND MOTIONS TO AMEND**

**(a) Amended Pleadings.** Unless the court orders otherwise, any amended pleading must be complete in itself and must not incorporate by reference any prior pleading.

**(b) Motions to Amend.** Any motion to amend a pleading must be accompanied by: (1) a copy of the proposed amended pleading, and (2) a version of the proposed amended pleading that shows — through redlining, underlining, strikeouts, or other similarly effective typographic methods — how the proposed amended pleading differs from the operative pleading. If the court grants the motion, the moving party must file and serve the amended pleading.

[Adopted effective February 1, 1991; amended January 3, 2000; amended May 17, 2004; amended September 24, 2009; amended July 23, 2012]

#### **2012 Advisory Committee's Note to LR 15.1**

The language of LR 15.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

### **LR 16.1 CONTROL OF PRETRIAL PROCEDURE BY INDIVIDUAL JUDGES**

**(a)** Each judge may prescribe any pretrial procedures that the judge deems appropriate and that are consistent with the Federal Rules of Civil Procedure and with these rules.

**(b)** When a judge schedules a conference authorized by LR 16.2-16.6, the judge must give the parties reasonable notice of the date and time for the conference.

**(c)** At a conference authorized by LR 16.2-16.6, the judge may require attendance by the parties, the parties' attorneys, the parties' representatives, or representatives of insurance companies whose coverage may apply.

[Adopted effective February 1, 1991; amended November 1, 1996; amended January 3, 2000; amended July 23, 2012]

#### **2012 Advisory Committee's Note to LR 16.1**

The language of LR 16.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

The language about alternative dispute resolution in former subsections (d) and (e) of this rule has been moved to LR 16.5. The language requiring parties to consider the use of ADR has been removed because it is addressed in LR 26.1 and Forms 3-4.

#### **1999 Advisory Committee's Note to LR 16.1**

The Alternative Dispute Resolution Act of 1998 requires that each district implement an ADR program to encourage and promote the use of Alternative Dispute Resolution in the District. The Act further requires that the Court designate an ADR Administrator which may a judicial officer or court employee who is knowledgeable in alternative dispute resolution practices and processes to implement administer, oversee and evaluate the court's alternative dispute resolution program. Title 28 United State Code, Sections 651; 652) Local Rule 16.1(d)and (e) are designed to comply with the mandate of the Act in these respects.

#### **1996 Advisory Committee's Note to LR 16.1**

The Civil Justice Reform Act Implementation Plan (CJRA Plan) adopted by the District Court observes that early and ongoing judicial control of the pre-trial process promotes efficient case management. Local Rules 16.1 through 16.8 are designed to implement many of the provisions of the CJRA Plan. These Local Rules codify many of the Court's past practices by defining with some particularity some of the more useful ways in which the Court has employed the Rule 16 conference to manage cases. The Rules are also designed to provide some uniformity among the judicial officers of the Court without sacrificing the flexibility Fed. R. Civ. P. 16 is intended to encourage.

LR 16.1 authorizes each Judge to manage his or her own docket by the adoption of any pre-trial procedures which are consistent with the Federal Rules of Civil Procedure and these Local Rules. The Rule also requires that reasonable notice of the time for the conference be given to all parties and makes clear that the Court has the power to order the attendance at any conference those whose attendance is necessary to accomplish the business of the conference.

### **LR 16.2 INITIAL PRETRIAL CONFERENCE AND SCHEDULING ORDER**

**(a) When a Conference Is Required.** Except in a proceeding listed in Fed. R. Civ. P. 26(a)(1)(B), the court must set an initial pretrial conference for the purpose of adopting a scheduling order.

**(b) Attendance.** Unless the court orders otherwise, only the attorneys and unrepresented parties need to attend the initial pretrial conference.

**(c) Protective Order.** At the initial pretrial conference, the court must address any unresolved issues relating to a proposed protective order submitted under LR 26.1(c).

**(d) Scheduling Order.**

(1) *Required Contents.* The scheduling order must include:

(A) a deadline for joining other parties;

(B) a deadline for amending the pleadings;

(C) a deadline for completing fact discovery;

(D) deadlines with respect to expert discovery, including one or more of the following:

(i) a deadline for disclosing the identity of expert witnesses;

(ii) a deadline for disclosing, in accordance with Fed. R. Civ. P. 26(a)(2)(B) or (C), the substance of each expert witness's testimony; and

(iii) a deadline for completing expert discovery;

(E) deadlines for filing and serving:

(i) nondispositive motions; and

(ii) dispositive motions;

(F) a date by which the case will be ready for trial;

(G) any modifications to the extent of discovery, such as, among other things, limits on:

(i) the number of fact depositions each party may take;

(ii) the number of interrogatories each party may serve;

(iii) the number of expert witnesses each party may call at trial;

(iv) the number of expert witnesses each party may depose; and

(H) a statement of whether the case will be tried to a jury or the bench and an estimate the trial's duration.

(2) *Permitted Contents.* In addition to matters specified in Fed. R. Civ. P. 16(b)(3)(B), the scheduling order may include procedures for handling the discovery and filing of confidential or protected documents.

(3) *Discovery Deadlines.* The discovery deadlines established under LR 16.2(d)(1)(C) and (D)(iii) are deadlines for completing discovery, not for commencing discovery. To be timely, a discovery request must be served far enough in advance of the applicable discovery deadline that the responding party's response is due before the discovery deadline.

[Adopted effective November 1, 1996, amended February 9, 2006; amended December 1, 2009; amended July 23, 2012]

#### **2012 Advisory Committee's Note to LR 16.2**

The language of LR 16.2 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Matter previously found in LR 16.2(a) that related to the parties' conference under Fed. R. Civ. P. 26(f) has been relocated to LR 26.1. New LR 16.2(c) and (d)(2) have been added to specify that issues related to confidential or protected documents must be addressed at the initial pretrial conference and may be addressed in the scheduling order. New LR 16.2(d)(3) clarifies the nature of discovery deadlines.

#### **2005 Advisory Committee's Note to LR 16.2 and Form 4 and 5**

Form 4 addresses recurring issues in patent cases. Form 4 is intended to reduce motion practice and to encourage parties to narrow and focus issues for resolution by the Court, including claim construction issues. Although various provisions in Form 4 are phrased in terms of the "plaintiff" and the "defendant", in cases of counterclaims of patent infringement or for declaratory judgment, each party asserting a patent is expected to provide the information required for "plaintiff", and each party asserting a defense to patent infringement is expected to provide the information required for "defendant".

Paragraph (c) allows discovery related to a charge of willful infringement and to defenses of invalidity and unenforceability, such as the defense of inequitable conduct, without pleading of those defenses, in order to encourage parties to explore whether there is a substantial basis for such pleading before pleading them. The Court of Appeals for the Federal Circuit has commented that "the habit of charging inequitable conduct in almost every major patent case has become an absolute plague." *Burlington Indus. v. Dayco Corp.*, 849 F.2d 1418, 1422 (Fed. Cir. 1988). The Committee considered a

proposal to require leave of the Court for pleading inequitable conduct or willfulness, similar to Minn. Stat. § 549.191 (2003), but concluded that the power of the Court to dismiss such allegations under Rules 12 and 56 of the Federal Rules of Civil Procedure provides an existing tool for management of insufficient charges of inequitable conduct or willfulness.

Paragraph (e)(7) encourages the parties to agree in advance as to the discoverability of drafts of expert reports and provides that in the absence of agreement, such drafts are not discoverable. Under the Federal Rule of Civil Procedure 26, the Court has power to limit use of any discovery method by local rule if the Court determines that the burden or expense of proposed discovery outweighs its benefit. Discovery of drafts of expert reports rarely provides substantial benefits. This paragraph is intended to end motion practice as to the discoverability of drafts of expert reports.

Paragraphs (f) and (g) provide a sequence of exchanges intended to focus issues for claim construction by the Court. The parties are expected to determine the most appropriate intervals for the exchanges given the particular circumstances of a case. In general, the Court has ordered intervals of 30 to 60 days between each step in the series of exchanges. In particular cases, a different schedule may be appropriate, for example if a party intends to bring an early motion that does not depend on claim construction, such as a motion to dismiss for lack of subject matter jurisdiction.

Paragraph (h) provides for a delay of the waiver of attorney-client privilege when an opinion of counsel is offered as part of a defense to a charge of willful infringement and a provision allowing the parties to make proposals addressing other phasing or sequencing issues in discovery. The Committee considered and rejected recommending any presumptions for phased discovery or establishing schedules for phased discovery because of the variety of circumstances presented in patent cases. For example, in certain cases, prejudice could result from discovery of willfulness issues relating to attorney-client materials. On the other hand, willfulness discovery could be relevant to issues of infringement and/or equitable defenses to infringement. Depending upon the case, phasing of discovery could save discovery expense or cause an expensive duplication of discovery efforts.

Paragraph (h)(1) is intended to address discovery controversies that frequently arise when there is a claim of willful infringement and a denial based upon reliance on advice of counsel. Motion practice often follows requests for discovery, including motions to compel discovery or motions to stay discovery and bifurcate trial. Paragraph (h)(1) encourages the parties to agree on the time table for discovery regarding the waiver of any applicable attorney-client privilege on topics relevant to willfulness or articulate proposals regarding such discovery in advance of the initial pretrial conference. The parties are not required to propose that the Court phase discovery regarding the waiver of any applicable attorney-client privilege on topics relevant to willfulness. This provision provides a format for the parties to meet and confer on this subject and either present joint or individual proposals to be considered by the Court.

The general provision set forth in paragraph (h)(2) is intended to encourage the parties to identify other areas of agreement or dispute regarding discovery phasing early so these matters can be addressed at the initial pretrial conference. Optional responses to paragraph (h)(2) include no proposals, joint proposals, or individual proposals regarding the phasing or sequencing of discovery. The inclusion of paragraph (h)(2) should not be interpreted to mean phased discovery is favored in patent cases. Whether discovery on topics that are the subject of discovery are phased depends upon the Court's discretion in adopting a pretrial schedule. Whether phased discovery is proposed or adopted also does not create a presumption regarding the bifurcation of any issues for trial.

Paragraph (h)(3) addresses protective orders and proposes, but does not require, Form 5 as a template for such orders. The Committee concluded that repeated negotiation of such orders wastes the parties' resources and delays the beginning of discovery. The parties are accordingly required to raise issues relating to any protective order, including issues relating to what persons may have access to

documents designated for protection under the order, at the initial pretrial conference, and the Court is to endeavor to resolve such issues in connection with the conference.

Form 5 is meant to focus attention on the issues that are typically contested in negotiating protective orders rather than resolve those issues. This Form is thus presented as one that might serve as a template for protective orders even though in any individual case, parties may by agreement or by motion depart from the template.

Paragraph (n) provides for the use of a tutorial describing the technology and matters in issue for the benefit of the Court. A technology tutorial is not mandatory. Rather, the parties are free to decide whether a technology tutorial would be helpful to educate the Court regarding the technology at issue. A mandatory technology tutorial would unnecessarily increase the cost of and needlessly complicate patent suits involving relatively simple, easily understandable technologies.

If the parties believe that it would be helpful to the Court to have a tutorial, it is not required that the tutorial be in the form of a video tape. Should the parties determine that a format other than video tape be more appropriate, such as a DVD or a computerized presentation, they may suggest the format at the initial pretrial conference. For any such format selected, the parties must confirm the Court's technical ability to access the information contained in the tutorial. The parties may further choose to present the tutorials in person.

The purpose of the technology tutorial is to educate the Court. As such, the scheduling of the tutorial should preferably be early in the litigation, and most preferably before the exchange of claim construction briefs. However, the scheduling of the tutorial may vary based on the complexity of the case and the amount at stake in the litigation. In some cases, the parties may suggest that the tutorial be due mid-discovery to allow its use in connection with any possible summary judgment motions or claim construction hearing. In cases that are likely to settle early on, the parties may suggest the deadline for the tutorial be set late in the litigation in hopes of avoiding its cost altogether.

Whether or not the parties agree to use a technology tutorial, the Court may request that the parties have their experts appear to explain the technology. However, expert legal testimony (as opposed to technical testimony) on such substantive issues as invalidity (by anticipation, obviousness, on-sale bar, etc.) and claim construction and infringement are not intended to be part of the tutorial.

Paragraph (o) provides for the use of the patent procedure tutorial. The purpose of the patent procedure tutorial is to educate the jury about the patent process. The Federal Judicial Center distributes this 18-minute video, entitled "An Introduction to the Patent System". This video provides jurors with an overview of patent rights in the United States, patent office procedure, and the contents of a patent.

A decision by one or all the parties not to show a patent procedure tutorial as set forth in Paragraph (o) does not preclude a Court from showing the patent procedure tutorial on its own initiative.

#### **1996 Advisory Committee's Note to LR 16.2**

LR 16.2 incorporates the requirement of the CJRA Plan that an early scheduling conference be held as soon as practicable. The Rule defines this as an Initial Pre-Trial Conference and requires that one be scheduled in every case, except those in categories that the Court, by Local Rule 16.8, has determined to be inappropriate for such a conference. The Rule 26(f) Report form 3 and the recitation of what a pre-trial schedule shall contain is designed to create some uniformity among the judicial officers of the Court with respect to the content of pre-trial schedules.

LR 16.2 contemplates that the pre-trial schedule will set a single date by which all discovery shall be completed and by which all non-dispositive pre-trial motions shall be filed and served. The Advisory Committee considered and rejected a suggestion that the Rule 16 pre-trial schedule set different dates for the termination of discovery and for the hearing of non-dispositive motions, in order to create a period, following the close of discovery, for hearing non-dispositive motions. The Committee rejected the suggestion because it would be inconsistent with LR 37.1, which requires that motions involving discovery disputes shall be served and filed prior to the discovery termination date established pursuant to Rule 16. This provision of LR 37.1 was designed to address the practical problem of how to timely resolve discovery disputes which arise near the close of the discovery period.

Under LR 37.1, by counting backward from the discovery deadline, counsel can plan to serve their discovery requests in such a way that, in the event the response is inadequate, they will still have time to make a motion before the termination of discovery. Because the motion, to be timely, needs only to be filed and served, the inability to get a hearing date before the close of discovery will not prejudice any party.

### **LR 16.3 MODIFICATION OF A SCHEDULING ORDER**

**(a)** A motion under Fed. R. Civ. P. 16(b)(4) to modify a scheduling order—even a stipulated or uncontested motion — must be made in accordance with LR 7.1(b).

**(b)** A party that moves to modify a scheduling order must:

- (1) establish good cause for the proposed modification: and
- (2) explain the proposed modification's effect on any deadlines.

**(c)** If a party moves to modify a scheduling order's discovery deadlines, the party must also:

- (1) describe what discovery remains to be completed;
- (2) describe the discovery that has been completed;
- (3) explain why not all discovery has been completed; and
- (4) state how long it will take to complete discovery.

**(d)** Except in extraordinary circumstances, before the passing of a deadline that a party moves to modify, the party must obtain a hearing date on the party's motion to modify the scheduling order. The hearing itself may take place after the deadline.

[Adopted effective February 1, 1991; amended November 1, 1996; amended July 23, 2012]

**2012 Advisory Committee's Note to LR 16.3**

The language of LR 16.3 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Under Fed. R. Civ. P. 16(b)(4), "[a] schedule may be modified only for good cause and with the judge's consent." The changes to LR 16.3(a) and (b) are intended to clarify for parties that they cannot simply stipulate to a change in a scheduling order. Instead, parties must move to modify a scheduling order.

#### **1996 Advisory Committee's Note to LR 16.3**

LR 16.3 is intended to discourage modifying pre-trial schedules unless good cause has been shown. This Rule, which was enacted before the CJRA Implementation Plan was adopted, is consistent with the Plan's suggestion that judicial officers be authorized to impose and enforce discovery deadlines that promote adequate but prompt case preparation.

### **LR 16.4 CASE-MANAGEMENT CONFERENCE**

**(a)** The court may schedule a case-management conference at any time if the complexity of the case or other factors warrant such a conference.

**(b)** A party may request that a case-management conference be scheduled.

**(c)** The court may, before a case-management conference, require the parties to prepare a plan to efficiently manage litigation costs. The parties should consider case-management techniques such as, among others:

- (1) limiting the number, length or scope of depositions;
- (2) minimizing travel costs and saving attorney time by using telephonic and videoconferencing tools for depositions;
- (3) using a shared digital document repository;
- (4) using multiple-track discovery to expedite complex matters;
- (5) minimizing discovery costs by stipulating to facts; and
- (6) enforcing discovery deadlines that promote adequate but prompt case preparation.

**(d)** After a case-management conference, the court may adopt a case-management order.

[Adopted effective November 1, 1996; amended July 23, 2012]

#### **2012 Advisory Committee's Note to LR 16.4**

The language of LR 16.4 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

#### **1996 Advisory Committee's Note to LR 16.4**

LR 16.4 attempts to provide judicial officers with the flexibility needed to manage large complex cases which can consume a disproportionate amount of judicial resources. The Rule encourages the parties and the Court to adopt creative case management techniques. The techniques suggested by the Rule are those expressly mentioned in the CJRA Plan, but are illustrative only. The Rule does not intend by the enumeration of certain techniques to in any way discourage or disparage the use of other cost containment techniques. The Rule enables any party to request a Case Management Conference. Whether to convene such a conference, however, is left to the discretion of the judicial officers.

### **LR 16.5 ALTERNATIVE DISPUTE RESOLUTION AND MEDIATED SETTLEMENT CONFERENCE**

#### **(a) Alternative Dispute Resolution.**

(1) *Purpose.* The court has devised and implemented an alternative dispute resolution program to encourage and promote the use of alternative dispute resolution in this district.

(2) *Authorization.* The court authorizes the use of alternative dispute resolution processes in all civil actions, including adversary proceedings in bankruptcy, except that the use of arbitration is authorized only as provided in 28 U.S.C. § 654.

(3) *Administrator.* The Chief Magistrate Judge is the administrator of the court's alternative dispute resolution program.

(4) *Neutrals.* The full-time magistrate judges constitute the panel of neutrals made available for use by the parties. The disqualification of a magistrate judge from serving as a neutral is governed by 28 U.S.C. § 455.

**(b) Mediated Settlement Conference.** Before trial — except in a proceeding listed in Fed. R. Civ. P. 26(a)(1)(B) — the court must schedule a mediated settlement conference before a magistrate judge. The court, at a party's request or on its own, may require additional mediated settlement conferences. Each party's trial counsel, as well as a party representative having full settlement authority, must attend each mediated settlement conference. If insurance coverage may be applicable, an insurer's representative having full settlement authority must also attend.

#### **(c) Other Dispute Resolution Processes.**

(1) *Mandatory Judicial Processes.* The court may order the parties, trial counsel, and other persons whose participation the court deems

necessary to participate in any or all of the following processes before a judge: mediation, early neutral evaluation, and, if the parties consent, arbitration.

(2) *Mandatory Nonjudicial Processes.* The court may order the parties, trial counsel, and other persons whose participation the court deems necessary to participate in any or all of the following processes before someone other than a judge: mediation, early neutral evaluation, and, if the parties consent, arbitration. The court may order the parties to pay, and may allocate among them, the reasonable costs and expenses associated with such a process, but the court must not allocate any such costs or expenses to a party who is proceeding in forma pauperis pursuant to 28 U.S.C. § 1915.

(3) *Optional Processes.* The court may offer civil litigants other alternative dispute resolution processes such as, for example, mediation, early neutral evaluation, minitrials, summary trials, and arbitration.

**(d) Confidentiality of Dispute Resolution Communications.**

(1) *Definition.* A “confidential dispute resolution communication” is any communication that is:

(A) made to a neutral during an alternative dispute resolution process; and

(B) expressly identified to the neutral as being confidential information that the party does not want communicated to any other person outside of the alternative dispute resolution process.

(2) *Nondisclosure.* A confidential dispute resolution communication must not be disclosed outside the alternative dispute resolution process by anyone without the consent of the party that made the confidential dispute resolution communication.

[Adopted effective November 1, 1996; amended January 3, 2000; amended July 23, 2012]

**2012 Advisory Committee’s Note to LR 16.5**

The language of LR 16.5 has been amended in accordance with the restyling process described in the 2012 Advisory Committee’s Preface on Stylistic Amendments.

The title and structure of LR 16.5 have been amended to emphasize the importance of the required mediated settlement conference and to specify, as envisioned by 28 U.S.C. § 652(b), that such a

conference is not required in certain actions (namely, proceedings listed in Fed. R. Civ. P. 26(a)(1)(B)). Former LR 16.5(a)(2) required that a mediated settlement conference be held “[w]ithin 45 days prior to trial.” This time limit has been eliminated as unnecessary in revised LR 16.5(b), which relates to mediated settlement conferences. Other subsections of LR 16.5 have been revised to more closely conform their language to the language of the governing statute, the Alternative Dispute Resolution Act of 1998, 28 U.S.C §§ 651-658. Arbitration as an alternative dispute resolution process is governed by 28 U.S.C. §§ 654-658.

### **1999 Advisory Committee’s Note to LR 16.5**

The Alternative Dispute Resolution Act of 1998 requires that every district authorize the use of Alternative Dispute Resolution processes in all civil actions, (Title 28 United States Code, Section 651(b)) and to provide litigants in all civil cases with at least one alternative dispute resolution process (Title 28 United States Code, Section 652(a)). By this Local Rule 16.5(a)(1) the Court complies with the requirement of the Act that it authorize the use of Alternative Dispute Resolution processes. To comply with the requirement of Section 652(a) of Title 28 United States Code, (the Alternative Dispute Resolution Act of 1998), that the court provide litigants in all civil cases with at least one alternative dispute resolution process, Local Rule 16.5(a)(2) requires that a settlement conference be held in every civil case, not exempted by the Rule. The Judges of the District Court have concluded that a mediated settlement conference presided over by a magistrate judge is the one alternative dispute resolution process it will provide to litigants in all civil cases.

Parties are of course free to agree upon the use of other alternative dispute resolution processes, and Local Rule 16.5(b) authorizes the court to order any other alternative dispute resolution process which it deems necessary. Because the voluntary selection by the parties of alternative dispute resolution processes as well as court-ordered alternative dispute resolution processes depart from the “panel of neutrals” made available by LR 16.5(a)(3), the Court is not establishing by this Rule the “amount of compensation” (See 28 U.S.C. § 658) to be received by such persons, allowing that compensation to be freely negotiated, as in longstanding practice, by the parties.

The Alternative Dispute Resolution Act of 1998 also requires that the Court adopt appropriate processes for making neutrals available for use by the parties, and authorizes the use of Magistrate Judges for this purpose. (See Title 28 United States Code, Section 653) By this Rule, the Court expressly designates the full time Magistrate Judges of the District to be the panel of neutrals contemplated by the Act, and expressly makes them available to the parties for the purpose of conducting mediated settlement conferences in every civil case not otherwise exempted by local rule. The Act further requires that the court adopt rules for the disqualification of neutrals. To comply with this provision of the Act, the Court expressly incorporates by reference the provisions of Title 28 United States Code, Section 455.

The Act further requires that the court adopt rules to provide for the confidentiality of the alternative dispute resolution process and to prohibit disclosure of confidential dispute resolution communications. See Title 28 United States Code Section 652(d). By Local Rule 16.5(c) the Court complies with this requirement of the Act.

### **1996 Advisory Committee’s Note to LR 16.5**

In 1986, the Federal Practice Committee in the District of Minnesota recommended that the Court not adopt a formal ADR program. In 1993, the Civil Justice Reform Act Advisory Group also recommended that the Court not impose mandatory ADR. The Advisory Committee, like the CJRA Group, supports the use of selective ADR mechanisms on a case by case basis as determined by the individual Judge or Magistrate Judge. This Rule recognizes the Court’s authority to require the parties to pay

reasonable costs associated with ADR, but expressly exempts from this requirement parties who are proceeding in forma pauperis.

Regarding settlement conferences, see 28 U.S.C. 473(b)(5), which provides “a requirement that, upon notice by the Court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference.”

## **LR 16.6 FINAL PRETRIAL CONFERENCE**

**(a) Timing.** No more than 45 days before trial — except in a proceeding listed in Fed. R. Civ. P. 26(a)(1)(B) — the court must hold a final pretrial conference. This final pretrial conference may be combined with the mediated settlement conference required by LR 16.5(b).

**(b) Matters for Discussion.** At the final pretrial conference, the parties must be prepared to discuss with the court:

- (1) stipulated and uncontroverted facts;
- (2) issues to be tried;
- (3) disclosure of all witnesses;
- (4) exhibit lists and the exchange of copies of all exhibits;
- (5) motions in limine, pretrial rulings, and, where possible, objections to evidence;
- (6) disposition of all outstanding motions;
- (7) elimination of unnecessary or redundant proof, including limitations on expert witnesses;
- (8) itemized statements of each party’s total damages;
- (9) bifurcating the trial;
- (10) limits on the length of trial;
- (11) jury-selection issues;
- (12) facilitating in other ways the just, speedy, and inexpensive disposition of the action, such as, for example, presenting testimony by way of deposition or by a summary written statement; and

(13) any other matter identified in Fed. R. Civ. P. 16(c) and (e), Fed. R. Civ. P. 26(a)(3), or LR 39.1.

**(c) Jury Instructions in Patent Cases.** If the case involves a claim arising under the patent laws that is to be tried to a jury, the parties must confer before the final pretrial conference with the goal of agreeing on a common set of model jury instructions to be used as a template for each party's proposed jury instructions.

**(d) Final Pretrial Order.** After the final pretrial conference, the court must issue a final pretrial order that includes:

- (1) a deadline for filing and serving motions in limine;
- (2) a deadline for the disclosures required by Fed. R. Civ. P. 26(a)(3);
- (3) a deadline for filing and exchanging the documents identified in LR 39.1(b); and
- (4) any other deadline.

[Adopted effective November 1, 1996, amended February 9, 2006; amended July 23, 2012]

#### **2012 Advisory Committee's Note to LR 16.6**

The language of LR 16.6 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Subsection (b) of LR 16.6 has been revised in two ways. First, subsection (b) was revised to clarify that although parties must be prepared to discuss the listed subjects, if some of the subjects are not relevant in a particular case, the court is not required to discuss them. Second, item (b)(13) was added to clarify that the final pretrial conference can embrace any of the subjects identified in the relevant provisions of the Federal Rules of Civil Procedure.

#### **2005 Advisory Committee's Note to LR 16.6(c)**

The Committee recognizes that there are several model jury instructions that could be used as a template for proposed jury instructions. Specifically, model jury instructions issued by the United States Courts of Appeals for Fifth, Ninth, and Eleventh Circuits, the United States District Courts for the District of Delaware and the Northern District of California, the American Intellectual Property Law Association, and the Federal Circuit Bar Association might be appropriate.

#### **1996 Advisory Committee's Note to LR 16.6**

LR 16.6's requirement of a final pretrial conference is intended to facilitate the efficient trial of the case while minimizing the element of surprise. The Rule is also designed to provide some uniformity among the members of the Court with respect to the content of the final pretrial order.

## **LR 16.7 OTHER PRETRIAL CONFERENCES [Abrogated]**

[Adopted effective November 1, 1996; abrogated July 23, 2012]

### **2012 Advisory Committee's Note to LR 16.7**

Local Rule 16.7 is abrogated as redundant of Fed. R. Civ. P. 16(a), which allows the court to schedule "one or more pretrial conferences . . . ." The rule number is reserved for possible future use.

### **1996 Advisory Committee's Note to LR 16.7**

LR 16.7 is designed to give Judges and Magistrate Judges maximum flexibility to schedule pretrial conferences at any time to consider any of the subjects contemplated by Fed. R. Civ. P. 16.

## **LR 17.1 SETTLEMENT OF ACTION OR CLAIM BROUGHT BY GUARDIAN OR TRUSTEE**

In diversity actions brought on behalf of a minor or ward or by a trustee appointed to maintain a wrongful-death action, the court follows the State of Minnesota's procedure for approving settlements and allowing attorney's fees and expenses.

[Adopted effective February 1, 1991; amended July 23, 2012]

### **2012 Advisory Committee's Note to LR 17.1**

The language of LR 17.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

## **LR 23.1 DESIGNATION OF "CLASS ACTION" IN THE CAPTION**

A party who seeks to maintain a case as a class action must include the words "Class Action" next to the caption of the complaint or other pleading asserting a class action.

[Adopted effective February 1, 1991; amended July 23, 2012]

### **2012 Advisory Committee's Note to LR 23.1**

The language of LR 23.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

## **LR 24.1 PROCEDURE FOR NOTIFICATION OF ANY CLAIM OF UNCONSTITUTIONALITY [Abrogated]**

[Adopted effective February 1, 1991; abrogated January 31, 2011]

## 2011 Advisory Committee's Note to LR 24.1

Local Rule 24.1 is abrogated as redundant of Fed. R. Civ. P. 5.1. The rule number is reserved for possible future use.

## LR 26.1 CONFERENCE OF THE PARTIES UNDER FED. R. CIV. P. 26(f); REPORT; PROTECTIVE ORDERS

**(a) Conference Content.** At the Rule 26(f) conference, the parties must discuss:

- (1) the matters specified in Fed. R. Civ. P. 26(f);
- (2) the matters specified in the notice of the initial pretrial conference and in any applicable order; and
- (3) the matters specified in either:
  - (A) LR Form 3, if no party asserts a claim that arises under the patent laws; or
  - (B) LR Form 4, if a party asserts a claim that arises under the patent laws.

### **(b) Rule 26(f) Report and Proposed Scheduling Order.**

- (1) *Timing.* Within 14 days of the Rule 26(f) conference, the parties must file a joint Rule 26(f) report and proposed scheduling order.
- (2) *Form.* Unless the court orders otherwise:
  - (A) If no party asserts a claim that arises under the patent laws, the joint Rule 26(f) report and proposed scheduling order must be in the form prescribed in LR Form 3.
  - (B) If a party asserts a claim that arises under the patent laws, the joint Rule 26(f) report and proposed scheduling order must be in the form prescribed in LR Form 4.
- (3) *Disagreements.* If the parties disagree about an aspect of a proposed scheduling order, each party must set forth its separate proposal with respect to the area of disagreement in the joint Rule 26(f) report and proposed scheduling order.

**(c) Protective Order.**

(1) *Proposed Order.* If a party believes that a protective order to govern discovery is necessary, the parties must jointly submit a proposed protective order as part of the joint Rule 26(f) report and proposed scheduling order required under LR 26.1(b).

(2) *Form.* The court encourages, but does not require, that:

(A) if no party asserts a claim that arises under the patent laws, the joint proposed protective order be in the form prescribed in LR Form 6; or

(B) if a party asserts a claim that arises under the patent laws, the proposed protective order be in the form prescribed in LR Form 5.

(3) *Disagreements.* If the parties disagree about an aspect of a proposed protective order, the parties must submit a joint report identifying their areas of disagreement. This joint report may be — but is not required to be — separate from the parties' joint Rule 26(f) report.

**(d) Request for Early Rule 26(f) Conference.**

(1) *Right to Request a Conference.* Any party may request a Rule 26(f) conference before the date on which Rule 26(f) requires the conference to be held.

(2) *Mandatory Attendance.*

(A) If all parties have been served, the non-requesting parties must attend a conference requested under LR 26.1(d)(1) if:

(i) the request is made in writing at least 14 days before the requested date for the conference; and

(ii) the request is made at least 30 days after each defendant has answered, pleaded, or otherwise responded in the action.

(B) If some parties have not been served, the non-requesting parties who have been served must attend a conference requested under LR 26(d)(1) if:

- (i) the request is made in writing at least 14 days before the requested date for the conference;
- (ii) the request is made at least 30 days after the parties that have been served have answered, pleaded, or otherwise responded in the action; and
- (iii) significant delay is expected to occur before the remaining parties will be served.

(3) *Failure to Attend.* If a party fails to attend a conference requested under LR 26(d)(1), the court may impose appropriate sanctions under Fed. R. Civ. P. 37(f).

(4) *Right to Reschedule.* A party may make a reasonable request to reschedule a conference requested under LR 26(d)(1) to a date within 14 days of the date initially requested for the conference. A party that makes such a request to reschedule is not required to attend the conference on the date initially requested.

[Adopted effective November 1, 1996; amended January 3, 2000; amended August 31, 2001; amended December 1, 2009; amended July 23, 2012]

#### **2012 Advisory Committee's Note to LR 26.1**

The language of LR 26.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

New LR 26.1(a)-(b) clarifies the parties' obligations to meet and confer and file a report under Fed. R. Civ. P. 26(f) in the form prescribed in LR Form 3 (non-patent cases) or LR Form 4 (patent cases), unless the court orders otherwise. New LR 26.1(a)-(b) includes matter previously found in LR 16.2 relating to Fed. R. Civ. P. 26(f). Forms 3 and 4 were revised as described in the 2012 Advisory Committee's Preface on LR Forms 3-6.

Local Rule 26.1(c) is new. Subsection (c) was added to require the parties to address whether a protective order is necessary and incorporates reference to LR Form 5 and Form 6. Forms 5-6 are presented as templates for protective orders; the court may on its own or on motion depart from the templates.

The language in LR 26.1(d) was previously found in former LR 26.1(f).

#### **2001 Advisory Committee's Note to LR 26.1**

(1) The 1993 Amendments to the Federal Rules of Civil Procedure permitted district courts to exempt classes of cases from the "initial disclosure" rules. The 2000 Amendments to the Federal Rules of Civil Procedure remove the authorization for local-rule exemption. The Committee Notes to the 2000 Federal Rules of Civil Procedure Amendments state that the purpose of the amendments are to "establish

a nationally uniform practice” for initial disclosures and to “restore national uniformity to disclosure practice.” Accordingly, the local rule exemptions to initial disclosures are removed.

(2) The 1993 Amendments to the Federal Rules of Civil Procedure stated, “By order or by local rule, the court may alter the limits in these rules on the number of depositions and interrogatories and may also limit the length of depositions under Rule 30 and the number of requests under Rule 36.” The 1996 Local Rules Amendments interpreted that language to permit limitations on discovery for certain categories of cases. The 2000 Federal Rules of Civil Procedure Amendments remove the authorization for local-rule limitations on discovery (except for limitations on Rule 36 Admissions). The Local Rules Advisory Committee interprets this amendment as removing the authorization for the categorical limitations on discovery by local rule. In addition, the 2000 Amendments appear to remove the authority to exempt certain cases by local rule (e.g., class actions) from the Federal Rules of Civil Procedure limits on interrogatories and depositions.

(3) Given the deletion of the remainder of 26.1(b), the Advisory Committee determined that there was no need for this cross-reference.

(4) The 1996 Local Rules permitted discovery in certain classes of cases to begin before the 26(f) meeting. This rule was authorized by FED.R.CIV.P. 26(d) which provided, “Except when authorized under these rules or by local rule, order, or agreement of the parties, a party may not seek discovery from any source before the parties have met and conferred as required by subdivision (f).” The 2000 Amendments to the Federal Rules of Civil Procedure remove the authority for local-rule modification of the general rule that discovery must be delayed until after the 26(f) meeting.

(5) The 2000 Amendments to the Federal Rules of Civil Procedure removed the authority for local rule exemptions from the 26(f) meeting requirement. Thus, those exemptions have been removed from the local rule. The 2000 Federal Rules of Civil Procedure Amendments lengthened the lead-time between 26(f) meeting and pretrial conference from 14 to 21 days. This change is reflected in the local rule. Nothing in the 2000 Amendments limits the district court’s authority to clarify the means of scheduling a 26(f) conference or specify the content of the report to the court. Accordingly, these provisions of the local rule are unchanged.

## **LR 26.2 FORM OF CERTAIN DISCOVERY DOCUMENTS [Abrogated]**

[Adopted effective February 1, 1991; amended November 1, 1996; abrogated July 23, 2012]

### **2012 Advisory Committee’s Note to LR 26.2**

Local Rule 26.2 has been abrogated as unnecessary due to the direction provided in renumbered LR 37.1 concerning the form of discovery motions.

## **LR 26.3 DISCLOSURE AND DISCOVERY OF EXPERT TESTIMONY [Abrogated]**

[Adopted effective November 1, 1996; abrogated July 23, 2012]

### **2012 Advisory Committee's Note to LR 26.3**

In 2012, LR 16.2, LR 26.1, and Forms 3 and 4 were amended. In light of those amendments, LR 26.3 became superfluous. Accordingly, LR 26.3 was abrogated.

### **1996 Advisory Committee's Note to LR 26.3**

The new national rules relating to expert discovery were vigorously debated among the committee members. Those who supported new Federal Rule of Civil Procedure 26(a)(2) suggested that the timely exchange of detailed reports, as required by the new rule, would discourage parties from "bluffing" about their claims or defenses until the eleventh hour. The requirement that detailed expert reports be timely exchanged would encourage more prompt settlements of lawsuits. Supporters of the new national rules also observed that new Rule 26(b)(4), which permits depositions of experts without a Court order, simply conforms the rule to actual practice in Minnesota, where expert depositions have become fairly routine.

Opponents of the new rules expressed concern that they would significantly and needlessly increase the cost of discovery for a substantial proportion of lawsuits venued in federal court by requiring both a detailed report and a subsequent expert depositions. Opponents also argued that the new rule makes it more difficult to find persons willing to serve as experts, because many are reluctant to invest the time needed to prepare a report that conforms to the requirements of the new rule. Opponents argued that the old practice of giving summary descriptions of expert opinions in interrogatory answers drafted by lawyers functioned well (and continues to function well in state court) and therefore should not be modified.

The committee attempted to accommodate the concerns of both the proponents and opponents of the new national rules. The parties may agree to, and the Court may order, any form of expert disclosure and discovery, including but not limited to discovery in the manner it was conducted prior to the 1993 Amendments, discovery as specified in the National Rules as they now stand, or any other set of procedures that will advance the goals of the Federal Rules of Civil Procedure. These Local Rules create no preference or presumption for any particular form of expert disclosure and discovery. LR 26.3(a) as now drafted recognizes the power of the parties to fashion a disclosure and discovery plan designed to meet the needs of the individual case. For example, if the expense associated with the preparation of detailed reports would unduly increase the cost of the case, the parties can agree to or the Court may order, a less expensive approach to expert discovery. Moreover, expert depositions are not "required" if the parties choose not to take them or the Court determines that they should be allowed only upon a showing of good cause. This approach is also consistent with the 1993 Advisory Committee Notes to the National Rules, which expressly recognize the ability of the parties to waive the requirement of a written report or to impose the requirement on additional persons who will provide opinion testimony under Fed. R. Evid. 702. If the parties are unable to agree upon an approach to expert discovery, as with other aspects of the discovery plan, LR 26.3(b) contemplates that the parties will set forth their respective proposals in the Rule 26(f) report. The Court will then decide which process will be employed to govern the discovery of the experts' opinions. In the absence of any stipulation, or case specific Court order, LR 26.3(c) provides that new Federal Rule of Civil Procedure 26(a)(2) and 26(b)(4) will govern.

## **LR 26.4 FILING OF DISCOVERY DOCUMENTS [Abrogated]**

[Abrogated in 2001]

### **2001 Advisory Committee's Note to LR 26.4**

Fed.R.Civ.P. 5(d) was amended in 2000, changing the default rule for the filing of discovery and disclosure documents. Prior to the amendment, discovery documents were required to be filed, unless the court ordered otherwise. Under the amendment, initial and expert disclosure documents and enumerated discovery documents are not to be filed until they are used in the proceeding, or the Court orders that they be filed. The 1991 and 1996 amendments to the local rule anticipated the 2000 Amendments in the national rule by restricting the filing of disclosure and discovery documents. In view of the restrictions in the national rule, the local rule is now superfluous, and has been eliminated.

## **LR 37.1 FORM OF DISCOVERY MOTIONS**

(a) A motion presenting a discovery dispute must include, in the motion itself or in an attached memorandum:

- (1) a specification of the discovery in dispute; and
- (2) either a verbatim recitation of each interrogatory, request, answer, response, or objection that is the subject of the motion, or a copy of the actual discovery document that is the subject of the motion.

(b) If the discovery dispute involves interrogatories, document requests, or requests for admission, the moving party's memorandum must set forth only:

- (1) the particular interrogatories, document requests, or requests for admission that are the subject of the motion;
- (2) the response or objection in dispute; and
- (3) a concise statement of why the response or objection is improper.

[Adopted effective February 1, 1991 as LR 37.2; amended and renumbered as LR 37.1 on July 23, 2012]

[Former LR 37.1 adopted effective November 1, 1996; amended September 24, 2009; abrogated July 23, 2012]

### **2012 Advisory Committee's Note to LR 37.1**

The language of new LR 37.1 (former LR 37.2) has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

In 2012, LR 7.1 was amended to require parties to meet and confer before filing any motion, and to file a meet-and-confer statement with the motion. This change, along with other changes to LR 16.2 through 26.1, rendered former Rule 37.1 superfluous. Accordingly, former LR 37.1 was abrogated, and former LR 37.2 was renumbered as LR 37.1.

#### **1996 Advisory Committee's Note to LR 37.1**

The language of LR 37.1 supplements provisions of the National Rules that require certification of good faith efforts to resolve discovery disputes. See, e.g., Fed. R. Civ. P. 26(c) and Fed. R. Civ. P. 37(a)(2)(A), 37(a)(2)(B), 37(a)(4)(A), and 37(d).

#### **LR 37.2 [Renumbered as LR 37.1]**

[Adopted effective February 1, 1991; renumbered July 23, 2012]

#### **2012 Advisory Committee's Note to LR 37.2**

Former LR 37.2 was renumbered as LR 37.1 after former LR 37.1 was abrogated.

#### **LR 38.1 DEMAND FOR A JURY TRIAL**

A party that demands a jury trial under Fed. R. Civ. P. 38(b) may do so by writing "Demand for Jury Trial" (or the equivalent) on the front page of a pleading, immediately after the pleading's title. A party may also use any other manner of demanding a jury trial that complies with Fed. R. Civ. P. 38(b).

[Adopted effective February 1, 1991; amended July 23, 2012]

#### **2012 Advisory Committee's Note to LR 38.1**

The language of LR 38.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

The substance of the last sentence of the former version of LR 38.1 ("Failure to use this manner of noting the demand will not result in a waiver under Rule 38(d).") has been recast in a positive form. The rule now instructs parties that they may demand a jury trial either by the method prescribed in LR 38.1, or by any other method that complies with Fed. R. Civ. P. 38(b) — even if that other method differs from the method prescribed in LR 38.1.

#### **LR 39.1 PREPARATION FOR TRIAL IN CIVIL CASES**

**(a) Trial Date.** Each judge regularly places a group of civil cases on a trial calendar and sets the date that a trial will begin in one of those cases (the "trial date"). At least 21 days before the trial date, the judge must notify the parties of a case's placement on the trial calendar. Cases on the trial calendar may be tried in any order, in front of any judge.

**(b) Trial-Related Documents.** Unless the court orders otherwise, each party must submit or make available the following documents:

(1) *Before any trial.*

(A) Initial pretrial documents. At least 14 days before the trial date, each party must file and serve the following documents:

(i) Trial brief.

(ii) Exhibit list. Parties must use an exhibit-list form that is substantially the same as the exhibit-list form available from the clerk. Parties must mark each exhibit with the offering party's role (and, if necessary, the offering party's name), a unique arabic numeral identifying the exhibit, and the case number. For example:

- Pltf. 1, 08-CV-1234
- Deft. 1, 08-CV-1234
- Pltf. Smith 1, 08-CV-1234

(iii) Witness list. A party's witness list must briefly summarize each witness's expected testimony.

(iv) List of deposition testimony. A party must designate the specific parts of a deposition to be offered at trial, except that a party need not designate specific parts of a deposition that may be offered only to impeach testimony given at trial.

(v) Motions in limine.

(B) Exhibits. At least 14 days before the trial date, the parties must make exhibits available to one another for examination and copying.

(C) Deposition objections. At least 7 days before the trial date, a party who objects to deposition testimony designated by another party for introduction at trial must file and serve a list of objections.

(2) *Before a jury trial.* In a jury trial, each party must also file and serve the following documents at least 14 days before the trial date:

(A) Proposed voir dire questions.

(B) Proposed jury instructions.

(i) In general. Each proposed jury instruction must be numbered, must begin on a separate page, and must identify the supporting legal authority.

(ii) Patent cases. In a case that involves a claim that arises under the patent laws, if a proposed jury instruction is based on model jury instructions that the parties agreed to use under LR 16.6(c), the proposed instruction must show how it differs from the model instruction.

(C) Proposed verdict form.

(3) *Before a bench trial.* In a bench trial, each party must also file and serve proposed findings of fact and conclusions of law at least 14 days before the trial date.

[Adopted effective February 1, 1991; amended November 1, 1996; amended May 17, 2004, amended February 9, 2006; amended December 1, 2009; amended May 14, 2013]

**2013 Advisory Committee's Note to LR 39.1**

The language of LR 39.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

The provision relating to the submission of exhibit lists, now LR 39.1(b)(1)(A)(ii), has been revised to permit parties to submit their exhibit lists either on a form available from the clerk or on a form substantially the same as the clerk's form.

Former LR 39.1(c), related to sanctions for failure to comply with LR 39.1, was deleted as a needless cross-reference to LR 1.3, which applies of its own force.

**2005 Advisory Committee's Note to LR 39.1(b)(2)(B)(ii)**

**In general.** Paragraph (b)(2)(B)(ii) set outs a suggested practice in which the jury instructions of both parties relating to the scope, validity, enforcement, or unenforceability of patents is based on a single, common set of standard jury instructions. The handling of jury instructions has proven to require significant resources from both the parties and the Court. The instructions can be lengthy and detailed. In addition, the traditional process, by which the parties construct their proposed instructions in isolation from each other, presents inherent inefficiencies. It tends to cause the parties to suggest differing instructions even where they do not disagree over substance. In addition, it makes it difficult to identify the substantive points that the parties actually dispute. The problems are especially acute in cases relating to patents.

The suggestion in paragraph (b)(2)(B)(ii) addresses these problems by encouraging the parties to present their proposed suggestions as additions to or deletions from a common set of standard

instructions. Under this practice, the instructions proposed by the parties will agree unless at least one party takes the affirmative step of proposing a modification of the standard language. Presumably this will occur only where the party considers the matter to be worth addressing. As a result, aspects of the instructions over which the parties do not disagree, and which the parties consider routine, will be proposed in unmodified form in such a manner as to make the lack of dispute clear. Accordingly, the areas of true disagreement will be plainly visible. In this way, the paragraph should reduce the time and cost, for both the parties and the Court, of attending to jury instructions.

Various other districts have promulgated local rules that require or encourage the parties' proposed instructions to be related to a common set of standard instructions. The suggestion in paragraph (b)(2)(B)(ii) is similar to the more lenient of these rules.

**Two-stage procedure; default standard instructions.** Paragraph (b)(2)(B)(ii) operates in connection with paragraph (c) of Local Rule 16.6. Under the two paragraphs, the parties are to consult regarding the selection of a particular set of pattern jury instructions as part of the final pretrial conference. The Rule contemplates that the parties will, in most cases, be able to agree on a particular set of pattern jury instructions. In the event that they are unable to agree, however, the parties should expect that the Court may, on its own initiative, impose a set of common instructions on them.

**Scope of requirement; included cases vs. included instructions.** The suggestion in paragraph (b)(2)(B)(ii), and the related requirement to confer under paragraph (c) of Local Rule 16.6, are intended to apply to cases relatively broadly. Cases that are included under the Rule are any that involve a claim or defense relating to patents. This includes, but is not limited to, cases that include claims for patent infringement and/or declarations for patent non-infringement or invalidity. It also includes cases in which the claims may not "arise under" the law of patents strictly, but in which the claim or defense draws upon or involves a patent more tangentially. Examples of this latter type of case include, for example, claims for breach of contract, where the contract terms at issue refer to patents or patentable subject matter, or claims for violation of antitrust law where the accused conduct involves the use of a patent or patent rights.

At the same time, the suggestion in paragraph (b)(2)(B)(ii) actually to submit instructions in terms of additions and/or deletions from a standard text is narrower. It applies only to those instructions, in an included case, that relate to the scope, validity, enforcement, or unenforceability of a patent. This is less than all the issues that may exist in an included case, and it is contemplated that, under the usual circumstances, only some of the instructions in an included case will be of the type that the Rule suggests be presented as additions and/or deletions. Instructions not included in the suggestion can be presented in any acceptable manner.

**Freedom to propose particular instructions; consistency with Fed. R. Civ. P. 51.** Under the practice suggested in paragraph (b)(2)(B)(ii), all parties retain the freedom to propose whatever instructions they choose. The practice does not restrict the substance of what the parties must propose; rather, it addresses only the form. The paragraph contemplates that parties who disagree with a particular standard instruction have the freedom to alter it if necessary to lay out the text of the instruction that they wish to propose. In this way, paragraph (b)(2)(B)(ii) is fully consistent with the parties' general freedom to present jury instructions, as set out for example in Fed. R. Civ. P. 51.

## LR 39.2 CONDUCT OF TRIALS AND HEARINGS

### (a) Addressing the Court and Examining Witnesses.

(1) When addressing the court, counsel must stand and speak clearly and audibly from the counsel table or the lectern. Counsel must not approach the bench for private communications except at the judge's request or with the judge's permission.

(2) Ordinarily, counsel must examine a witness from the lectern. But counsel may, if necessary, approach the witness or the court reporter's table to present or examine an exhibit.

(3) Unless the court orders otherwise, only one attorney for each party may examine a witness or present argument to the court with respect to a motion or other matter.

### (b) Examining Jurors.

(1) *In general.* Unless the court orders otherwise, the court will conduct voir dire examination of jurors. A party may submit proposed voir dire questions to the court.

(2) *Peremptory challenges.*

(A) When exercised. No party may exercise a peremptory challenge until a full panel has been called, sworn, and qualified.

(B) Ordinary civil cases. In an ordinary civil case, the defendant and plaintiff will take turns — in that order — exercising their peremptory challenges by striking one juror each until each party has exhausted or waived its peremptory challenges.

(C) Civil cases with third-party defendants. In a civil case involving a third-party defendant, the defendant, the third-party defendant, and the plaintiff will take turns — in that order — by striking one juror each until each party has exhausted or waived its peremptory challenges.

(D) Criminal cases. In a normal criminal case with a panel of 28 jurors, the parties will exercise peremptory challenges as follows:

- 3 by defendant;

- 2 by the government;
- 3 by defendant;
- 2 by the government;
- 2 by defendant;
- 1 by the government;
- 2 by defendant; and
- 1 by the government.

**(c) Opening Statements and Final Arguments**

*(1) Opening statements.*

(A) In general. Unless the court orders otherwise, an opening statement must not exceed one hour.

(B) Civil cases. After a jury has been selected and before evidence is presented, a party may make an opening statement that summarizes generally what the party expects to prove. If the party with the burden of proof wishes to make an opening statement, that party makes the first opening statement. Unless the court orders otherwise, a party may not make an opening statement after evidence has been presented.

(C) Criminal cases. The defendant in a criminal case may make an opening statement either:

- (i) after the jury has been selected and before any evidence is presented; or
- (ii) after the prosecution rests.

*(2) Final arguments.*

(A) In general. Unless the court orders otherwise, a final argument must not exceed one hour.

(B) Civil cases. Each party may make a final argument. The party without the burden of proof on a claim makes its final argument first, with no opportunity for rebuttal.

(C) Criminal cases. The government makes its final argument first. The defendant makes his or her final argument next. The government may make a brief rebuttal, to which the defendant may not respond.

[Adopted effective February 1, 1991; amended May 14, 2013]

#### **2013 Advisory Committee's Note to LR 39.2**

The language of LR 39.2 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

The title of the rule has been revised to eliminate an inconsistency between the previous rule's title and its text. Specifically, former LR 39.2(a)(3) referred to "the presentation of a motion or other matter," which would seem to refer to hearings other than trials, but the rule's title was "Conduct of Trials." The rule's new title clarifies that LR 39.2's non-trial-specific provisions apply to hearings as well as trials. To be consistent with the time limit imposed for final arguments, LR 39.2(c)(1) imposes a time limit of one hour for opening statements.

### **LR 40.1 INDIVIDUAL CALENDAR SYSTEM**

#### **(a) Assignment of Cases.**

(1) *In general.* When a case or matter is filed, the clerk must assign it to a specific judge by a method of random allocation approved by the court. Unless the assigned judge orders otherwise, that judge will preside over the case until it is finally determined.

(2) *Requests for immediate relief.* When a party requests immediate relief such as an order to show cause, a temporary restraining order, or a similar order, the request will ordinarily go to the judge assigned in accordance with LR 40.1(a)(1). But if the assigned judge is unavailable, the request will go to a judge designated by the assigned judge to review such requests.

#### **(b) Scheduling.** Each judge independently schedules all matters.

[Adopted effective February 1, 1991; amended May 14, 2013]

### **2013 Advisory Committee's Note to LR 40.1**

The language of LR 40.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

LR 40.1(b) has been revised to reflect the court's current practice of allowing each judge to schedule matters independently. Former LR 40.1(c) was deleted as a needless cross-reference to LR 6.1, which applies of its own force.

### **1991 Advisory Committee's Note to LR 40.1**

LR 40.1 is the same as 1987 Local Rule 2, except that, to conform with the uniform numbering system, part (C) of 1987 Local Rule 2, dealing with continuance of cases, was re-numbered as LR 6.1.

This rule is not intended to modify the procedures for recusal or the reassignment of related cases. The random allocation order is on file with the Clerk of Court and is available to counsel.

## **LR 47.2 CONTACTS WITH JURORS**

**(a) General Rule.** Unless the court orders otherwise, a party and anyone acting for a party must not directly or indirectly contact a juror until the court has discharged the juror from service.

**(b) Law Enforcement Exception.** In extraordinary circumstances involving a jury-tampering investigation or related criminal investigation, federal law enforcement authorities may contact undischarged jurors without prior court approval. The government must notify the court as soon as possible after such contact.

[Adopted effective February 1, 1991; amended May 14, 2013]

### **2013 Advisory Committee's Note to LR 47.2**

The language of LR 47.2 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

## **LR 54.3 COSTS AND ATTORNEY'S FEES**

**(a) Under EAJA.** A party must file and serve an application for fees under the Equal Access to Justice Act within 30 days of final judgment as that term is defined in 28 U.S.C. § 2412(d)(2)(G).

**(b) Under Rule 54(d)(2).** When a party timely files and serves a motion for attorney's fees and related nontaxable expenses under Fed. R. Civ. P. 54(d)(2), the court must issue a briefing schedule. A party who seeks to be excused for failing to comply with the briefing schedule must show good cause.

**(c) Under Rule 54(d)(1).** If a party seeks costs under Fed. R. Civ. P. 54(d)(1):

(1) *Bill of costs.*

(A) Within 30 days after judgment is entered, a party seeking costs must file and serve a verified bill of costs using a form available from the clerk.

(B) Within 14 days after being served with the bill of costs, the opposing party may file and serve objections.

(C) Within 7 days after being served with any objections, the party seeking costs may file and serve a response.

(2) *Taxing of costs by the clerk.* Unless the court directs otherwise, the clerk will tax costs after the bill of costs, any objections, and any response have been filed and served in accordance with LR 54.3(c)(1).

(3) *Review of clerk's action.*

(A) Within 14 days after the clerk taxes costs, a party may file and serve a motion and supporting documents for review of the clerk's action.

(B) Within 14 days after being served with the motion for review, a party may file and serve a response.

(C) Unless the court orders otherwise, a party must not file a reply brief.

**(d) Under Fed. R. App. P. 39.**

(1) At the request of the circuit clerk under Fed. R. App. P. 39(d), the clerk must promptly add the statement of costs on appeal (or any amendment of that statement) to the mandate of the court of appeals.

(2) A party that seeks costs taxable under Fed. R. App. P. 39(e) must file a verified bill of costs (or amended bill of costs) within 14 days after the court of appeals issues the mandate. The procedures described in LR 54.3(c) — except the deadline for filing the initial bill of costs found in LR 54.3(c)(1)(A) — govern a bill of costs under this subsection.

[Adopted effective February 1, 1991; amended November 1, 1996; amended January 3, 2000; amended May 17, 2004; amended December 1, 2009; amended July 23, 2012; amended May 14, 2013]

### **2013 Advisory Committee's Note to LR 54.3**

The language of LR 54.3 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Subsection (b) has been revised to eliminate a filing deadline that was inconsistent with Fed. R. Civ. P. 54(d)(2)(B). Accordingly, the timeliness of a motion for attorney's fees and related nontaxable expenses depends on sources of law outside of LR 54.3(b), and LR 54.3(b) relates only to briefing schedules for such motions.

Former LR 54.3(c)(5), which specified that filing a bill of costs does not affect the appealability of a final judgment, has been deleted as unnecessary. When and whether a final judgment is appealable is the type of legal issue that is not subject to a court's local rules.

For organizational purposes, former subsection (c)(6) is now designated as subsection (d). New subsection (d)(2) (formerly part of subsection (c)(6)) relating to appellate costs taxable in the district court under Fed. R. App. P. 39(e) has been revised to clarify that — as with an ordinary bill of costs under LR 54.3(c) — a party must file a “verified” bill of costs, as required by 28 U.S.C. § 1924.

### **2012 Advisory Committee's Note to LR 54.3**

Former subsection (d), which stated that motions filed under this rule must comply with LR 7.1, has been deleted as redundant of LR 7.1.

### **2009 Advisory Committee's Note to LR 54.3**

This local rule has been amended to be consistent with the amendments to the federal rules on time-computation and changes the past practice of the Clerk of Court not to tax costs until all applicable appeal periods have expired. The amended rule now requires the request to be filed promptly after the entry of judgment.

The form referenced in LR 54.3(c)(1) is available in all Clerk's Office locations and electronically on the Court's website at [www.mnd.uscourts.gov](http://www.mnd.uscourts.gov). When filing a bill of costs or amended bill of costs under subsection (c)(6), refer to Fed. R. App. P. 41 to determine when the Court of Appeals mandate was issued.

Parties are encouraged to refer to the District Court's Bill of Costs Guide, which is available in all Clerk's Office locations and electronically on the Court's website at [www.mnd.uscourts.gov](http://www.mnd.uscourts.gov).

### **1991 Advisory Committee's Note to LR 54.3**

In general, applications for attorney's fees should be submitted promptly after a determination of the case on the merits. Prompt submission aids the trial Judge, whose memory of the work of the lawyers is fresh, and facilitates appellate consideration of the whole controversy. As a general procedure, then, the rule requires attorney's fees motions to be submitted within 30 days of the entry of judgment.

The Equal Access to Justice Act, 28 U.S.C. § 2412, requires (and permits) applications for fees to be made “within thirty days of final judgment in the action”. “Final judgment” is defined as “a judgment that is final and not appealable, and includes an order of settlement”. It is clear that the EAJA contemplates that fee applications will be made either after appeal, or after the time for appeal has run. The rule adopts the statutory time and definitions for EAJA petitions. Some circumstances (in addition to those relating to the EAJA) may call for a different schedule for the submission of fee motions. For example, if post-judgment motions may significantly affect the results of the case (and thus the extent of the award), it may be more fair or more efficient to postpone submission and consideration of the fee motions until after those motions are decided. Additionally, in rare instances, delaying the fee consideration until after an appeal is determined may promote justice and efficiency. Subparagraph (b)(2) provides a procedure by which a party seeking fees can ask the Court to establish an alternate schedule. The Notice of Intention to Claim an Award of Attorney’s Fees tolls the time for submitting a fee motion, pending the establishment of the schedule by the district court. The drafters contemplate that the Court will, in its schedule, provide adequate time for the preparation and submission of the detailed fee petition.

Finally, Section (b)(3) provides that the Court may excuse failure to abide by the provisions of the rule, for good cause shown. This section does not apply to EAJA petitions, which are governed by the statutory time limit.

## **LR 58.1 FIXED-SUM PAYMENT FOR PETTY OFFENSES AND OTHER MISDEMEANORS**

**(a) Authorization.** For a petty offense or misdemeanor listed in the court’s fixed-sum payment schedule, the court may accept a fixed-sum payment in lieu of the defendant’s appearance and end the case.

**(b) Fixed-Sum Payment Schedule.** The full-time magistrate judges must maintain a schedule of petty offenses and other misdemeanors for which a fixed-sum payment may be accepted in lieu of the defendant’s appearance. The fixed-sum payment schedule must specify the amount of payment required for each identified offense and the effective date of the schedule. The fixed-sum payment schedule must be filed in the clerk’s offices and made available on the court’s website. The magistrate judges may amend the fixed-sum payment schedule periodically.

**(c) Payment.**

*(1) How made.* To pay a fixed sum, a defendant must submit payment to the Central Violations Bureau on or before the date the defendant is scheduled to appear in court.

*(2) Effect.* A defendant who pays a fixed sum in lieu of appearing for a petty offense or other misdemeanor waives the right to contest the charged violation.

**(d) Failure to Appear.** If a defendant does not pay a fixed sum and does not appear in court for a charged petty offense or other misdemeanor, the magistrate judge may:

- (1) impose any punishment — including fine, imprisonment or probation — that would be permitted upon conviction;
- (2) direct that a new summons be issued that orders the defendant to appear on a new date; or
- (3) order that a warrant be issued for the defendant's arrest.

**(e) Arrest and Mandatory Appearance.** Local Rule 58.1 does not prohibit a law-enforcement officer from:

- (1) requiring a defendant to appear in court based on the aggravated nature of the offense;
- (2) arresting a defendant for committing an offense; or
- (3) taking an arrested defendant, promptly after the arrest, before a magistrate judge.

[Adopted effective February 9, 2006; amended May 14, 2013]

#### **2013 Advisory Committee's Note to LR 58.1**

The language of LR 58.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Local Rule 58 was renumbered to LR 58.1 to be consistent with the court's local rule numbering conventions. Subsection (b) was amended to eliminate the list of agencies that may have a fixed-sum payment schedule and instead require that the fix-sum payment schedule be posted on the court's website. Subsection (c) is amended to reflect that fixed sum payments must now be made through the federal courts' Central Violation Bureau (CVB). Payments to CVB may be made by phone, mail, or online at [www.cvb.uscourts.gov](http://www.cvb.uscourts.gov). Subsection (e) was combined with former subsection (f) to include those instances where, within the law-enforcement officer's discretion, the defendant must appear in court due to the aggravated nature of the offense or that an arrest must be made.

#### **LR 67.1 MONEY DEPOSITED INTO THE COURT REGISTRY**

**(a) Court Order Required.** A party may deposit money into the court registry only by court order.

**(b) Motion and Proposed Order; Memoranda.**

(1) A party seeking to deposit money into the court registry under Fed. R. Civ. P. 67(a) must:

(A) file and serve a motion requesting an order permitting the deposit; and

(B) provide to chambers and serve a proposed order that specifies the exact amount of money to be deposited.

(2) Parties must not file proposed orders on the court's ECF system. Instead, proposed orders must be emailed to chambers and served in accordance with the procedures set forth in the court's most recent civil ECF guide.

(3) A party opposing a motion to deposit money into the court registry under Fed. R. Civ. P. 67(a) must, no later than 7 days after the motion is served, file and serve a memorandum that must not exceed 1,500 words if set in a proportional font, or 140 lines if set in a monospaced font.

(4) No later than 7 days after a memorandum opposing a motion to deposit money into the court registry is served, a party seeking to deposit money into the court registry may file and serve a reply memorandum that must not exceed 1,500 words if set in a proportional font, or 140 lines if set in a monospaced font.

**(c) Interest on Deposits.**

(1) The clerk will not deposit money posted as bond in an interest-bearing account.

(2) Unless the court orders otherwise, the clerk will deposit all other money in an interest-bearing account.

[Adopted effective February 1, 1991; amended October 29, 2003; amended January 31, 2011; amended May 14, 2013]

**2013 Advisory Committee's Note to LR 67.1**

The language of LR 67.1 relating to proposed orders has been revised to be consistent with similar language in LR 7.1.

## 2011 Advisory Committee's Note to LR 67.1

The filing requirements of LR 7.1(a)-(b), Civil Motion Practice, do not apply to motions to deposit money in the court registry. Parties who desire to deposit money into the court registry under Fed. R. Civ. P. 67(a) need only file a motion on the court's ECF system requesting the court to enter an order to deposit money into the court registry and e-mail the presiding judge a proposed order on that motion. Refer to the ECF Guides for information on providing the court with proposed orders.

Please note that the court requires the order to deposit money into the court registry to identify the exact amount that will be deposited. If the amount to be deposited changes between when the proposed order is filed and the order is to be entered — because of accrued interest, for example — the moving party must provide the court an amended proposed order identifying the exact amount to be deposited.

## LR 67.2 WITHDRAWAL OF MONEY FROM THE COURT REGISTRY

**(a) Court order required.** A party may withdraw money from the court registry only by court order.

**(b) Payee Information Form, Motion, and Proposed Order; Memoranda.**

- (1) A party seeking to withdraw money from the court registry must:
  - (A) file in paper form a Withdrawal Payee Information form;
  - (B) file and serve a motion requesting an order permitting the withdrawal and specifying whether the moving party is seeking withdrawal before the expiration of the 14-day automatic stay imposed under Fed. R. Civ. P. 62(a);
  - (C) provide to chambers and serve a proposed order that specifies:
    - (i) the name of each payee;
    - (ii) the amount of money to be disbursed to each payee;  
and
    - (iii) the percentage of accrued interest to be disbursed to each payee, if applicable.
- (2) Parties must not file proposed orders on the court's ECF system. Instead, proposed orders must be e-mailed to chambers in accordance with procedures set forth in the court's most recent civil ECF guides.
- (3) A party opposing a motion to withdraw money from the court registry must, no later than 7 days after the motion is served, file and

serve a memorandum that must not exceed 1,500 words if set in a proportional font, or 140 lines if set in a monospaced font.

(4) No later than 7 days after a memorandum opposing a motion to deposit money into the court registry is served, a party seeking to withdraw money from the court registry may file and serve a reply memorandum that must not exceed 1,500 words if set in a proportional font, or 140 lines if set in a monospaced font.

**(c) Fees.** A charge for the handling of registry funds deposited with the court will be assessed from the interest earnings in accordance with the fee schedule issued by the Director of the Administrative Office of the United States. Funds that are invested through the Court Registry Investment System will also be assessed an investment services fee from the interest earnings in accordance with the District Court Miscellaneous Fee Schedule.

**(d) Timing of Disbursements.** Unless the court orders otherwise, the clerk will not disburse any money from the court registry until 14 days after entry of an order granting a motion to withdraw money from the court registry.

[Adopted effective February 1, 1991; amended January 31, 2011; amended January 28, 2013].

#### **2013 Advisory Committee's Note to LR 67.2**

The language of LR 67.2 relating to proposed orders has been revised to be consistent with similar language in LR 7.1. Subsection (c) has been amended to reflect the fees that must be assessed when funds are deposited in an interest-bearing account with the court's registry.

#### **2011 Advisory Committee's Note to LR 67.2**

The filing requirements of LR 7.1(a)-(b), Civil Motion Practice, do not apply to motions to withdraw money from the court registry. Parties who desire to withdraw money from the court registry need only: (1) conventionally file the Withdrawal Payee Information form; (2) file a motion on the court's ECF system requesting the court to enter an order to withdraw money from the court registry; and (3) e-mail the presiding judge a proposed order. Refer to the ECF Guides for information on providing the court with proposed orders.

The Withdrawal Payee Information form is available from the clerk and electronically on the court's website at [www.mnd.uscourts.gov](http://www.mnd.uscourts.gov). The social security number information collected by the clerk on the form is provided to the depository institution pursuant to I.R.S. Ruling 76-50. This information is used for administrative purposes only and will be kept confidential. The Withdrawal Payee Information form will not be filed on the court's ECF system.

Please note that even if the court orders money to be withdrawn before the expiration of the 14-day stay period, administrative delays may occur in the disbursing of funds. Questions about money deposited into the court registry should be directed to the finance department at 612-664-5000.

### **LR 67.3 BONDS AND SURETIES**

**(a) General Requirements.** Every bond must be executed by the principal obligor and, if applicable, one or more sureties qualified as provided in this rule.

**(b) Not Qualified as Sureties.** Unless the court orders otherwise, the following persons may not serve as sureties on any bond:

(1) an employee of the United States District Court, District of Minnesota;

(2) an employee of the United States Marshals Service for the District of Minnesota; and

(3) a member of the bar of the United States District Court, District of Minnesota, or any such member's agent.

**(c) Corporate Sureties.**

(1) A corporate surety must be qualified to write bonds under 31 U.S.C. §§ 9301-9309 and approved by the Secretary of the Treasury of the United States.

(2) The representative of the corporate surety that signs the bond must attach to the bond a power of attorney that establishes the representative's authority to bind the corporate surety.

**(d) Real-Property Bonds.**

(1) A person may serve as a surety on a real-property bond only by court order. A person seeking permission to serve as a surety on a real-property bond must:

(A) offer as security real property located in the State of Minnesota of an unencumbered value equal to or greater than the stated amount of the bond;

(B) be competent to convey the real property; and

(C) submit an affidavit and supporting documents including:

(i) a legal description of the real property;

- (ii) a complete list of all encumbrances and liens on the real property;
- (iii) a current appraisal of the real property by a qualified appraiser;
- (iv) a waiver of inchoate rights;
- (v) a certification that the real property is not exempt from execution; and
- (vi) proof of payment of property taxes.

(2) Within 14 days after the court approves the real-property bond, the surety must file with the court a copy of a notice of encumbrance filed by the surety with the county recorder or registrar of titles that identifies the bond as an encumbrance on the real property.

(3) A real-property bond will be released only by court order.

**(e) Cost Bonds.** The court may, on motion or on its own, order a party to file a bond or other security for costs in an amount, and subject to conditions, specified by the court.

**(f) Cash Bonds.** Deposit of cash bonds is governed by LR 67.1. Withdrawal of cash bonds is governed by LR 67.2.

**(g) Personal-Recognizance Bond.** On a personal-recognizance bond, the obligor promises to comply with all conditions imposed by the court. An obligor that fails to comply with a condition or fails to appear will be subject to penalties as authorized by statute.

**(h) Objections.** Any party may object to the issuance of a bond.

[Adopted effective January 31, 2011].

#### **2011 Advisory Committee's Note to LR 67.3**

To confirm that a corporate surety is qualified to write a bond parties may consult the list of federally approved sureties and reinsuring companies at the website of the United States Department of Treasury.

#### **LR 71.1 CONDEMNATION CASES [Abrogated]**

[Adopted effective February 1, 1991; abrogated May 14, 2013]

## 2013 Advisory Committee's Note to LR 71.1

Local Rule 71.1 is abrogated as unnecessary. The court has general procedures for consolidating related cases, and those procedures are adequate for handling land-condemnation cases.

## LR 72.1 MAGISTRATE JUDGE DUTIES

**(a) General Designation.** In every case, the court designates the magistrate judge assigned to the case to perform the following duties authorized by 28 U.S.C. § 636:

- (1) Conduct scheduling conferences and enter pretrial schedules;
- (2) Hear and determine any pretrial matter pending before the court, except a motion: for injunctive relief; for judgment on the pleadings; for summary judgment; to dismiss or to permit maintenance of a class action; to dismiss for failure to state a claim upon which relief can be granted; or to involuntarily dismiss an action;
- (3) Conduct hearings, including evidentiary hearings, and submit to the district judge proposed findings and recommendations for the disposition of:
  - (A) dispositive pretrial motions in criminal cases, such as motions to dismiss or quash an indictment or information made by a defendant and motions to suppress evidence;
  - (B) applications for post-trial relief made by individuals convicted of criminal offenses;
  - (C) prisoner petitions challenging conditions of confinement; and
  - (D) motions for summary judgment in Social Security appeals under 42 U.S.C. § 405;
- (4) Conduct arraignments in criminal cases;
- (5) Conduct settlement conferences in civil cases; and
- (6) In accordance with 18 U.S.C. § 3401, with respect to misdemeanors committed within the district:
  - (A) Try a defendant accused of, and sentence a defendant convicted of, a petty offense; and

(B) With the defendant's consent, try a defendant accused of, and sentence a defendant convicted of, a misdemeanor other than a petty offense.

**(b) Specific Designation.** The district judge assigned to a case may specifically designate a magistrate judge to perform any of the duties authorized by 28 U.S.C. § 636(b). In performing the designated duties, the magistrate judge must conform to the Local Rules and the instructions of the district judge.

**(c) Consent Jurisdiction.**

(1) In every case, upon the consent of the parties, the court specially designates the assigned full-time magistrate judge under 28 U.S.C. § 636(c) to conduct the proceedings in a civil matter and to order the entry of judgment.

(2) When an action is filed, the clerk will notify the parties that a magistrate judge is available to conduct proceedings upon the parties' consent. Thereafter, a judge may again advise the parties of the magistrate judge's availability, but in doing so, the judge must advise the parties that they are free to withhold consent without adverse substantive consequences.

[Adopted effective February 1, 1991; amended May 17, 2004, amended May 16, 2005; amended September 24, 2009; amended December 1, 2009; amended May 14, 2013]

**2013 Advisory Committee's Note to LR 72.1**

The language of LR 72.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments. In particular, the language of LR 72.1 has been revised to align more closely with the language of 28 U.S.C. § 636 and 18 U.S.C. § 3401.

**2005 Advisory Committee's Note to LR 72.1 and LR 72.2**

This Rule was substantially restructured in 2005 to accommodate various changes made over the years to the Magistrate Judge Act, Title 28 United States Code, Section 636 and to Federal Rules of Civil Procedure 72 and 73.

The Rule contemplates that the duties described in Local Rule 72.1. a. will be automatically exercised by the Magistrate Judge in every case to which he or she is assigned without any further direction or reference by the District Court Judge.

In any individual case, pursuant to Local Rule 72.1 b, the District Judge to whom the case is assigned may also designate a Magistrate Judge to perform any of the other duties described in the Magistrate Judge Act. The Court and the Committee intend that these duties include the full range of duties permitted by the Act, Title 28 United States Code, Section 636, and may include but are not limited to: Serving as a special master; taking a jury verdict in the absence of the District Judge; conducting

hearings and submitting to the District Judge assigned to the case proposed findings of fact and recommendations for the disposition of dispositive pretrial motions in civil cases; receiving grand jury returns pursuant to Fed. R. Crim. P. 6(f); issuing writs or other process necessary to obtain the presence of parties or witnesses or evidence needed for Court proceedings; and performing any other additional duties as are not inconsistent with the Constitution and laws of the United States @ Title 28 United States Code, Section 636(b)(3).

### **1991 Advisory Committee's Note to LR 72.1(b)(2) and LR 72.1(c)(2)**

The Advisory Committee does not intend to require or encourage the filing of briefs accompanying objections to decisions by the Magistrate Judges. Ordinarily, the briefs submitted to the Magistrate Judge are sufficient for the district Judge to decide on objections. However, this rule gives the objecting party the option of filing a brief when the objecting party believes that special circumstances justify doing so.

The time period for appeal under LR 72.1(b) runs from the "entry of the Magistrate Judge's order". The time period for objecting under LR 72.1(c) runs from "being served with" a copy of the findings, recommendations, or report of the Magistrate Judge. This difference in language appears in Fed. R. Civ. P. 72(a) and Fed. R. Civ. P. 72(b), so the committee reluctantly preserved this distinction in the local rules.

This rule applies to objections to decision of Magistrate Judges under Fed. R. Civ. P. 72. It does not affect practice in appeals from trials by consent under Fed. R. Civ. P. 73-75. See Fed. R. Civ. P. 75(c), which provides time lines for filing briefs in proceedings on appeal from Magistrate Judges to district Judges under Fed. R. Civ. P. 73(d).

## **LR 72.2 REVIEW OF MAGISTRATE JUDGE RULINGS**

**(a) Nondispositive Matters.** When a pretrial matter not dispositive of a party's claim or defense is referred to and decided by a magistrate judge, a party may seek review of the magistrate judge's order on the matter as follows:

(1) *Objections.* A party may file and serve objections to the order within 14 days after being served with a copy, unless the court sets a different deadline. A party may not assign as error a defect in the order not timely objected to.

(2) *Response.* A party may respond to another party's objections within 14 days after being served with a copy.

(3) *Review by district judge.* The district judge must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law. The district judge may also reconsider on his or her own any matter decided by the magistrate judge but not objected to.

**(b) Dispositive Motions and Prisoner Petitions.** When, without the parties' consent, a pretrial matter dispositive of a party's claim or defense or a prisoner petition

challenging the conditions of confinement is assigned to and heard by a magistrate judge, a party may seek review of the magistrate judge's recommended disposition as follows:

(1) *Objections and transcript.* A party may file and serve specific written objections to a magistrate judge's proposed findings and recommendations within 14 days after being served with a copy of the recommended disposition, unless the court sets a different deadline. Unless the district judge orders otherwise, the objecting party must promptly arrange for transcribing the record, or whatever portions of it the parties agree to or the magistrate judge deems sufficient.

(2) *Response.* A party may respond to another party's objections within 14 days after being served with a copy.

(3) *Review by district judge.* The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions. Ordinarily, the district judge does not conduct a new hearing when ruling on a party's objections, but instead relies on the record of proceedings before the magistrate judge.

**(c) Format of Objections and Responses.**

(1) *Word or Line Limits.*

(A) Except with the court's prior permission, objections or a response to objections filed under LR 72.2 must not exceed 3,500 words if set in a proportional font, or 320 lines of text if set in a monospaced font.

(B) All text — including headings, footnotes, and quotations — counts toward these limits, except for:

- (i) the caption designation required by LR 5.2;
- (ii) the signature-block text; and
- (iii) certificates of compliance.

(C) A party who seeks to exceed these limits must first obtain permission to do so by filing and serving a letter of no more than two pages requesting such permission. A party who opposes such a request may file and serve a letter of no more than two pages in

response. This rule authorizes the parties to file those letters by ECF.

(2) *Type Size.*

(A) **Represented Parties.** Objections or a response to objections filed by a represented party must be typewritten. All text, including footnotes, must be set in at least font size 13 (i.e., a 13-point font) as font sizes are designated in the word-processing software used to prepare the objections or response to objections. Text must be double-spaced, with these exceptions: headings and footnotes may be single-spaced, and quotations more than two lines long may be indented and single-spaced. Pages must be 8 ½ by 11 inches in size, and no text — except for page numbers — may appear outside an area measuring 6 ½ by 9 inches.

(B) **Unrepresented Parties.** Objections or a response to objections filed by an unrepresented party must be either typewritten and double-spaced or, if handwritten, printed legibly.

(3) *Certificate of Compliance.* Objections or a response to objections must be accompanied by a certificate executed by the party's attorney, or by an unrepresented party, affirming that the document complies with the limits in LR 72.2(c)(1) and with the type-size limit of LR 72.2(c)(2). The certificate must further state how many words (if set in a proportional font) or how many lines (if set in a monospaced font) the document contains. The person preparing the certificate may rely on the word-count or line-count function of his or her word-processing software only if he or she certifies that the function was applied specifically to include all text, including headings, footnotes, and quotations. The certificate must include the name and version of the word-processing software that was used to generate the word count or line count.

[Adopted effective February 1, 1991; amended May 17, 2004, amended May 16, 2005; amended September 24, 2009; amended December 1, 2009; amended July 23, 2012; amended May 14, 2013]

**2013 Advisory Committee's Note to LR 72.2**

The language of LR 72.2 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments. In particular, the language of LR 72.2 has been revised to align more closely with the language of Fed. R. Civ. P. 72, and material that was redundant of 28 U.S.C. § 636 and Fed. R. Civ. P. 73 has been deleted. These deletions are not intended to have any substantive effect. Former subsection (c) was deleted and the rule was renumbered accordingly.

### **2012 Advisory Committee's Note to LR 72.2**

Technical amendments were made to LR 72.2 in light of changes made to LR 7.1. Specifically, all cross-references to LR 7.1 were eliminated, and a new subsection (d) was added to LR 72.2 to clarify that the format and filing requirements in LR 72.2 apply to objections and responses to objections filed under this rule in all cases, whether civil or criminal.

### **2005 Advisory Committee's Note to LR 72.1 and LR 72.2**

This Rule was substantially restructured in 2005 to accommodate various changes made over the years to the Magistrate Judge Act, Title 28 United States Code, Section 636 and to Federal Rules of Civil Procedure 72 and 73.

The Rule contemplates that the duties described in Local Rule 72.1. a. will be automatically exercised by the Magistrate Judge in every case to which he or she is assigned without any further direction or reference by the District Court Judge.

In any individual case, pursuant to Local Rule 72.1 b, the District Judge to whom the case is assigned may also designate a Magistrate Judge to perform any of the other duties described in the Magistrate Judge Act. The Court and the Committee intend that these duties include the full range of duties permitted by the Act, Title 28 United States Code, Section 636, and may include but are not limited to: Serving as a special master; taking a jury verdict in the absence of the District Judge; conducting hearings and submitting to the District Judge assigned to the case proposed findings of fact and recommendations for the disposition of dispositive pretrial motions in civil cases; receiving grand jury returns pursuant to Fed. R. Crim. P. 6(f); issuing writs or other process necessary to obtain the presence of parties or witnesses or evidence needed for Court proceedings; and performing any other additional duties as are not inconsistent with the Constitution and laws of the United States @ Title 28 United States Code, Section 636(b)(3).

### **1991 Advisory Committee's Note to LR 72.1(b)(2) and LR 72.1(c)(2)**

The Advisory Committee does not intend to require or encourage the filing of briefs accompanying objections to decisions by the Magistrate Judges. Ordinarily, the briefs submitted to the Magistrate Judge are sufficient for the district Judge to decide on objections. However, this rule gives the objecting party the option of filing a brief when the objecting party believes that special circumstances justify doing so.

The time period for appeal under LR 72.1(b) runs from the "entry of the Magistrate Judge's order". The time period for objecting under LR 72.1(c) runs from "being served with" a copy of the findings, recommendations, or report of the Magistrate Judge. This difference in language appears in Fed. R. Civ. P. 72(a) and Fed. R. Civ. P. 72(b), so the committee reluctantly preserved this distinction in the local rules.

This rule applies to objections to decision of Magistrate Judges under Fed. R. Civ. P. 72. It does not affect practice in appeals from trials by consent under Fed. R. Civ. P. 73-75. See Fed. R. Civ. P. 75(c), which provides time lines for filing briefs in proceedings on appeal from Magistrate Judges to district Judges under Fed. R. Civ. P. 73(d).

## **LR 79.1 CUSTODY AND DISPOSITION OF EXHIBITS AND DOCUMENTS**

**(a) Custody of the Clerk.** Ordinarily, a party must deliver to the clerk or the courtroom deputy all exhibits introduced into evidence at a hearing or trial, and the clerk or courtroom deputy will keep custody of the exhibits. But exhibits such as drugs, legal or counterfeit money, firearms, or contraband may be entrusted to the custody of the arresting or investigative government agency pending disposition of a case and during any subsequent appeal period.

**(b) Withdrawal of Original Exhibits and Documents.** A person may withdraw an original exhibit or document from the custody of the clerk or another court officer only:

(1) by leave of court, and

(2) after leaving a proper receipt with the clerk or officer.

**(c) Sealed Documents.** The clerk must not disclose or make available documents that are filed under seal, unless the court orders otherwise.

[Adopted effective February 1, 1991; amended November 1, 1996; amended May 1, 2000; amended October 18, 2007; amended May 14, 2013]

### **2013 Advisory Committee's Note to LR 79.1**

The language of LR 79.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Former subsections (d) and (e) concerning the removal and disposition of sealed documents have been eliminated. All documents, including sealed documents that are filed as part of the case record, are maintained in the case record in accordance with the records-disposition schedule approved by the Judicial Conference and the Archivist of the United States.

### **1996 Advisory Committee's Note to LR 79.1**

To facilitate reference, the portion of the 1991 version of LR 79.1 that relates to filing of discovery documents has been moved to LR 26.4.

## **LR 80.1 COURT REPORTERS' TRANSCRIPTS**

**(a) Filing.**

(1) *Reporters employed by the judiciary.* Unless the court orders otherwise, when an official court reporter employed by the judiciary completes a transcript of a court proceeding, the reporter must promptly file a certified copy on the court's ECF system.

(2) *Other reporters.* Unless the court orders otherwise, when an official court reporter not employed by the judiciary completes a transcript of a court proceeding, the reporter must promptly file a certified copy with the clerk, and the clerk must then file the copy on the court's ECF system.

**(b) Post-Filing Restriction.**

(1) Unless the court orders otherwise, access to a transcript prepared by an official court reporter and filed under LR 80.1(a) is restricted as follows:

(A) A transcript of a sealed proceeding or filed in a sealed case must not be made available to the public in any format.

(B) A transcript of a criminal voir dire proceeding must not be made available to the public in any format.

(C) Remote electronic access to a transcript of a civil voir dire proceeding is permanently restricted to the users identified in LR 80.1(b)(2).

(D) Remote electronic access to any other transcript is restricted to the users identified in LR 80.1(b)(2) for 90 days after the transcript is filed.

(2) Unless the court orders otherwise, during the 90 days after a transcript is filed, only the following users may access the transcript through the court's ECF system:

(A) Court staff;

(B) Persons using public terminals in the clerk's office for inspection only, not for copying;

(C) Parties that have purchased the transcript; and

(D) Other persons — such as, for example, appellate attorneys — as ordered by the court.

**(c) Availability After 90-Day Restriction Period.** After the 90-day post-filing restriction period and after the court resolves all pending motions related to the transcript's availability or contents, a transcript not subject to special restrictions under LR 80.1(b)(1) is available as follows unless the court orders otherwise:

(1) *Unredacted transcripts.* If an original transcript was not redacted, the clerk must permit remote electronic access to the transcript through the court's ECF system and must permit inspection and copying of the transcript at the clerk's office.

(2) *Redacted transcripts.* If an original transcript was redacted, the clerk must permit remote electronic access to the redacted transcript through the court's ECF system. Remote electronic access to the unredacted transcript is restricted to the users identified in LR 80.1(b)(2). The clerk must permit inspection and copying of the unredacted transcript at the clerk's office.

**(d) Transcript Fees.**

(1) *Payment required.* Ordinarily, until a party makes the required payment, a court reporter may decline to begin preparing a transcript or to furnish a completed transcript. But the court may excuse a party who has been permitted to proceed in forma pauperis from paying for a transcript and may require the court reporter to begin preparing a transcript or to furnish a completed transcript without payment from the party.

(2) *Fees for electronic access.* A person other than a court employee who remotely accesses a transcript through the court's ECF system must pay the applicable fees. A person may electronically access a transcript at the public terminals in the clerk's office for free.

(3) *Fees for purchasing transcript from court reporter.* A person may buy a copy of a publicly available transcript from a court reporter by paying the applicable fee.

(4) *Fee schedule.* The fees for transcript preparation and for transcripts purchased from court reporters are established by the Judicial Conference of the United States. The current fee schedule is available from the clerk and from the official court reporters.

[Adopted effective February 1, 1991; amended April 6, 2004; amended May 12, 2008; amended August 11, 2008; amended May 14, 2013]

**2013 Advisory Committee's Note to LR 80.1**

The language of LR 80.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

**2008 Advisory Committee's Note to LR 80.1**

LR 80.1 does not apply to deposition transcripts.

## **LR 83.2 FREE PRESS - FAIR TRIAL PROVISIONS**

**(a) Duty of Counsel.** It is the duty of a lawyer or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by any means of public communication, in connection with pending or imminent litigation with which the lawyer or law firm is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

(1) *Investigation Stages.* A lawyer participating in or associated with a grand jury or other pending investigation of any criminal matter shall refrain from making any extra-judicial statement which a reasonable person would expect to be disseminated by any means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or to otherwise aid in the investigation.

(2) *Pretrial Stages.* From the time of an arrest, the issuance of an arrest warrant, or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or the disposition without trial, a lawyer or law firm associated with the prosecution or defense shall not release or authorize the release of extra-judicial statements which a reasonable person would expect to be disseminated by any means of public communication, relating to that matter and concerning:

(A) The prior criminal record (including arrests, indictments or other charges of crime) or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status, and, if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in the apprehension of the accused or to warn the public of any dangers the accused may present;

(B) The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

(C) The performance of any examinations or tests, or the accused's refusal or failure to submit to an examination or test;

(D) The identity, testimony, or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;

(E) The possibility of a plea of guilty to the offense charged or a lesser offense; and

(F) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting office or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission, or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the Court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charge.

(3) *During Trial.* During the trial of any criminal matter including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extra-judicial statement or interview relating to the trial or to the parties or issues in the trial, which a reasonable person would expect to be disseminated by any means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial, except that the lawyer may quote from or refer without comment to public records of the Court in the case.

(4) *Other Proceedings.* Nothing in this rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders; to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies; or to preclude any lawyer from replying to charges of misconduct that are publicly made against him or her.

**(b) Duty of Courthouse Supporting Personnel.** All courthouse supporting personnel -- including, among others, marshals, deputy marshals, court clerks, bailiffs,

and court reporters and employees or subcontractors retained by court-appointed official reporters -- are prohibited from disclosing to any person, without authorization by the Court, information relating to a pending grand jury proceeding or criminal case that is not a part of the public records of the Court. The divulgence of information concerning grand jury proceedings, arguments and hearings held in chambers or otherwise outside the presence of the public is also forbidden.

**(c) Special Order of the Court.** In a widely publicized or sensational case, the Court, on motion of either party or on its own motion, may issue a special order governing such matters as extra-judicial statements by parties and witnesses which are likely to interfere with the rights of the accused to a fair trial by an impartial jury; the seating and conduct in the courtroom of spectators and news media representatives; the management and sequestration of jurors and witnesses; and any other matters which the Court may deem appropriate for inclusion in such an order. Such special order may be addressed to some or all of the following subjects:

- (1) A proscription of extra-judicial statements by participants in the trial, including lawyers, parties, witnesses, jurors, and court officials which might divulge prejudicial matter not of public record in the case;
- (2) Specific directives regarding the clearing of entrances to and hallways in the courthouse and respecting the management of the jury and witnesses during the course of the trial so as to avoid their mingling with or being in the proximity of reporters, photographers, parties, lawyers, and others, both in entering and leaving the courtroom and courthouse and during the recesses in the trial;
- (3) Specific direction that the jurors refrain from reading, listening to, or watching news reports concerning the case, and that they similarly refrain from discussing the case with anyone during the trial and from communicating with others in any manner during their deliberations;
- (4) Sequestration of the jury on motion of either party or the Court, without disclosure of the identity of the movant;
- (5) Direction that the names and addresses of jurors or prospective jurors not be publicly released except as required by statute, and that no photograph be taken or sketch made of any juror within the environs of the Court;
- (6) Insulation of witnesses from news interviews during the trial period;  
and

(7) Specific provisions regarding the seating of spectators and representatives of news media, including:

(A) An order that no member of the public or news media representative be at any time permitted within the bar railing; and

(B) The allocation of seats to news media representatives in cases where there is an excess of requests, taking into account any pooling arrangements that may have been agreed to among the news media personnel.

The above list of subjects is not intended to be exhaustive, but is merely illustrative of subject matters which might appropriately be dealt with in such an order. However, special orders which would prohibit representatives of the news media from broadcasting or publishing any information in their possession relating to a criminal case are inappropriate and nothing in this rule authorizes such an order.

**(d) Closure of Pretrial Proceedings.** Unless otherwise provided by law, all preliminary criminal proceedings, including preliminary examinations and hearings on pretrial motions, shall be available for attendance and observation by the public; provided that, upon motion made or agreed to by the defense, the Court, in the exercise of its discretion, may order a pretrial proceeding be closed to the public in whole or in part, on the grounds:

(1) That there is a reasonable likelihood that the dissemination of information disclosed at such proceeding would impair the defendant's right to a fair trial; and

(2) That reasonable alternatives to closure will not adequately protect defendant's right to a fair trial.

If the Court so orders, it shall state for the record its specific findings concerning the need for closure.

**(e) Photographic and Recording Equipment.** No cameras, whether film, video, or any other photographic means, shall be permitted in the courthouse, except that a Judge of this Court may authorize still or video photography of a ceremonial procedure in the courthouse.

Sound recording devices, including telephonic devices, such as pagers and other receiving, transmitting or enhancement devices, may be brought into the courthouse, but must be inoperative and unobtrusive at all times they are in a courtroom or in any adjacent area where their operation could be disruptive to any judicial business or proceeding.

The U.S. Marshal or designee court security officers are authorized to exclude from any courtroom, prohibit from the courthouse, or confiscate any devices the officer has reason to believe violates this rule.

All electronic devices shall be subject to visual and/or electronic inspection by the U.S. Marshal or designee court security officers at any time, and such inspection may include a required demonstration by the person in possession that it is functional.

[Adopted effective February 1, 1991; amended November 1, 1996]

## **LR 83.5 BAR ADMISSION**

### **(a) Members and Nonmembers.**

(1) The court's bar consists of those attorneys admitted to practice before the court in accordance with LR 83.5(b) and (c) and who pay the clerk all admission fees the court prescribes. A member of the court's bar must promptly notify the clerk, in writing, of any change in the member's name, mailing address, law-firm affiliation, telephone number, or e-mail address.

(2) A person who is not a member of the court's bar may not appear or participate in a trial or hearing except as follows:

(A) on his or her own behalf, if the person is a party who may represent himself or herself;

(B) as permitted by LR 83.5(d) or (e); or

(C) by special permission of the court.

**(b) Eligibility.** An attorney who has been admitted to practice before the Supreme Court of Minnesota is eligible for admission to the court's bar.

### **(c) Procedure for Admission.**

(1) **Petition.** An applicant for admission to the court's bar must file with the clerk a petition that includes:

- (A) the applicant's residence and office addresses;
- (B) a list of all courts before which the applicant has been admitted to practice;
- (C) a description of the applicant's legal training and legal experience; and
- (D) a certification that the applicant has read and is familiar with:
  - (i) the Federal Rules of Civil Procedure;
  - (ii) the Federal Rules of Criminal Procedure;
  - (iii) the Federal Rules of Evidence; and
  - (iv) the court's Local Rules.

(2) Fee and Supporting Documents. The petition must be accompanied by:

- (A) payment of the admission fee established by the court; and
- (B) certificates from two members of the court's bar stating:
  - (i) where and when they were admitted to practice before the court;
  - (ii) how long and under what circumstances they have known the petitioner; and
  - (iii) what they know of petitioner's character and legal experience.

(3) Motion. A member of the court's bar must move for the applicant's admission. The court will entertain a motion for the applicant's admission only after the clerk has examined the applicant's petition, has found that it complies with this rule, and has presented the petition to a judge.

(4) Oath. If the court grants a motion for an applicant's admission, the applicant must take an oath in open court:

- (A) to support the Constitution and laws of the United States;

- (B) to discharge faithfully the duties of a lawyer;
- (C) to behave uprightly and according to law and the recognized standards of ethics of the profession; and
- (D) to comply with the rules of professional conduct as adopted by this court.

**(d) Nonresident Attorneys.** An attorney who does not represent the United States or one of its officers or agencies, who resides outside of Minnesota, and who is not admitted to practice before the Supreme Court of Minnesota may be permitted to appear before the court pro hac vice only as follows:

- (1) The nonresident attorney must be a member in good standing of the bar of a federal district court other than this court.
- (2) The nonresident attorney must associate with an active member of the court's bar, in good standing, who must:
  - (A) participate in the preparation and presentation of the case;
  - (B) accept service of all papers; and
  - (C) be a Minnesota resident unless the court, upon motion, orders otherwise.
- (3) A member of the court's bar must move for the nonresident attorney's admission pro hac vice. The motion must:
  - (A) be accompanied by payment of the admission fee established by the court;
  - (B) be made on the form supplied by the clerk for admission pro hac vice of attorneys other than attorneys for the United States; and, as required by the form,
  - (C) include:
    - (i) an affidavit signed by the member of the court's bar who will be associating with the nonresident attorney; and
    - (ii) an affidavit signed by the nonresident attorney.

**(e) Government Attorneys.** An attorney who represents the United States or any of its officers or agencies and who is not a member of the court's bar must move

for admission on the form supplied by the clerk for the admission pro hac vice of attorneys for the United States. Such an attorney may be permitted to appear pro hac vice only as follows:

(1) An attorney who is a member in good standing of the bar of a federal court of appeals or a federal district court other than this court may, after filing the required form, represent the United States or any of its officers or agencies in this court.

(2) Any other attorney may represent the United States or any its officers or agencies in this court only if the attorney both files the required form and associates with an attorney from the United States Attorney's Office for the District of Minnesota. The associating attorney from the United States Attorney's Office for the District of Minnesota must:

(A) participate in the preparation and presentation of the case;  
and

(B) accept service on behalf of the United States of all papers.

[Adopted effective February 1, 1991; amended December 5th, 2008; amended January 31, 2011; amended May 9, 2011]

#### **2011 Advisory Committee's Note to LR 83.5**

The language of LR 83.5 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Subsection (e) was changed to provide for the pro hac vice admission for attorneys representing the government who are not admitted to practice in a United States District Court.

#### **LR 83.6 ATTORNEY DISCIPLINE**

##### **(a) Attorneys Convicted of Crimes.**

(1) Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the Court has been convicted in any Court of the United States, or the District of Columbia, or of any state, territory, commonwealth, or possession of the United States of a serious crime as hereinafter defined, the Court shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty, or nolo contendere, or from a verdict after trial or otherwise, and regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately

be served upon the attorney. Upon good cause shown, the Court may set aside such order when it appears in the interest of justice to do so.

(2) The term “serious crime” shall include any felony or any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a “serious crime.”

(3) A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based upon the conviction.

(4) Upon the filing of a certified copy of a judgment of conviction of any attorney for a serious crime, the Court shall in addition to suspending that attorney in accordance with the provisions of this rule, also refer the matter to counsel for the institution of a disciplinary proceeding before the Court in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.

(5) Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a “serious crime,” the Court may refer the matter to counsel for whatever action counsel may deem warranted, including the institution of a disciplinary proceeding before the Court; provided, however, that the Court may in its discretion make no reference with respect to convictions for minor offenses.

(6) An attorney suspended under the provisions of this rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the Court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

**(b) Discipline Imposed by Other Courts.**

(1) Any attorney admitted to practice before this Court shall, upon being subjected to public discipline by any other court of the United States

or the District of Columbia, or by a court of any state, territory, commonwealth, or possession of the United States; promptly inform the Clerk of this Court of such action. Unless otherwise ordered by this Court, any such attorney who has been temporarily or permanently prohibited from practicing law by order of any other court, whether by suspension, revocation, or disbarment, shall automatically forfeit his or her right to practice law before this Court during the same period that such attorney has been prohibited from practicing law by such other court. The Clerk of Court shall send a written notice to the attorney, together with a copy of this section of the Local Rules, informing the attorney of the forfeiture of his or her right to practice law before this court; but, any failure or delay with regard to the sending of such notice shall not affect the automatic forfeiture provisions of this section.

(2) If an attorney who has been prohibited from practicing law by order of some other court believes that he or she should not be required to forfeit his or her right to practice law before this Court, then such attorney may petition this Court seeking relief from the automatic forfeiture provision of subsection (b)(1). Any such petition shall be made in writing and shall be delivered to the Chief Judge of this Court. Such petition shall fully set forth the reason(s) that the relief requested should be granted. The petition shall also include a copy of the complete record of the disciplinary proceedings from the court that disciplined the attorney -- to the extent that such materials are reasonably available to the petitioning attorney.

(3) Within 7 days after the Chief Judge receives a petition seeking relief from the automatic forfeiture provision of subsection (b)(1), the matter shall be set for hearing before one or more Judges of this Court, unless the petitioning attorney consents to having the hearing conducted at some mutually convenient later date. Within 7 days after such hearing has been completed, the Court shall rule on the petition by granting or denying the relief sought, or by entering any other order that may be deemed appropriate. If the Court should fail to take any required action within the time periods prescribed by this subsection, for any reason not attributable to the petitioning attorney, then the petitioning attorney shall retain his or her right to practice law before this Court until the Court does take such required action.

Upon receiving a petition seeking relief from the automatic forfeiture provision of subsection (b)(1), the Chief Judge may, for good cause shown, temporarily suspend the automatic forfeiture provision and allow the petitioning attorney to continue to practice law before this Court pending the Court's final ruling on the petition. In the absence of such

temporary relief, the automatic forfeiture provision of subsection (b)(1) shall remain in effect pending the Court's final ruling on the petition.

(4) A petition seeking relief from the automatic forfeiture provisions of subsection (b)(1), shall not be granted unless the petitioning attorney has demonstrated, or this Court finds, that on the face of the record upon which the discipline by another court is predicated it clearly appears:

(A) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(B) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject; or

(C) that the imposition of the same discipline by this Court would result in grave injustice; or

(D) that the misconduct established is deemed by this Court to warrant substantially different discipline.

Where this Court determines that any of said elements exist, it shall enter such order as it deems appropriate.

(5) In all other respects, a final adjudication in another Court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in any other Court of the United States.

(6) This Court may at any stage appoint counsel to prosecute the disciplinary proceedings.

**(c) Disbarment on Consent or Resignation in Other Courts.**

(1) Any attorney admitted to practice before this Court who shall be disbarred on consent or resign from the bar of any other Court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth, or possession of the United States while an investigation into allegations of misconduct is pending, shall, upon the filing with this Court of a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation, cease to be

permitted to practice before this Court and be stricken from the roll of attorneys admitted to practice before this Court.

(2) Any attorney admitted to practice before this Court shall, upon being disbarred on consent or resigning from the bar of any other Court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth, or possession of the United States while an investigation into allegations of misconduct is pending, promptly inform the Clerk of this Court of such disbarment on consent or resignation.

**(d) Standards for Professional Conduct.**

(1) For misconduct defined in these rules, and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before this Court may be disbarred, suspended from practice before this Court, reprimanded or subjected to such other disciplinary action as the circumstances may warrant.

(2) Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the rules of professional conduct adopted by this Court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The Minnesota Rules of Professional Conduct adopted by the Supreme Court of Minnesota as amended from time to time by that Court are adopted by this Court except as otherwise provided by specific rules of this Court.

**(e) Disciplinary Proceedings.**

(1) When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted to practice before this Court shall come to the attention of a Judge of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these rules, the Judge shall refer the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate.

(2) Should counsel conclude after investigation and review that a formal disciplinary proceeding should not be initiated against the respondent-attorney because sufficient evidence is not present, or because there is pending another proceeding against the respondent-attorney, the disposition of which in the judgment of counsel should be

awaited before further action by this Court is considered or for any other valid reason, counsel shall file with the Court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise setting forth the reasons therefor.

(3) To initiate formal disciplinary proceedings, counsel shall obtain an order of this Court upon a showing of probable cause requiring the respondent- attorney to show cause within 30 days after service of that order upon that attorney, personally or by mail, why the attorney should not be disciplined. The order to show cause shall include the form certification of all Courts before which the respondent-attorney is admitted to practice, as specified in Form 1 appended to these Rules.

(4) Upon the respondent-attorney's answer to the order to show cause, if any issue of fact is raised or the respondent-attorney wishes to be heard in mitigation, this Court shall set the matter for hearing within 60 days before one or more Judges of this Court, provided, however, that if the disciplinary proceeding is predicated upon the complaint of a Judge of this Court, the hearing shall be conducted before a panel of at least two Judges of this Court appointed by the Chief Judge, or, if there are less than three Judges eligible to serve or the Chief Judge is the complainant, by the Chief Judge of the Court of Appeals for this circuit. The respondent-attorney shall execute the certification of all Courts before which that respondent-attorney is admitted to practice, on the form specified, and file the certification with his or her answer.

**(f) Disbarment on Consent While Under Disciplinary Investigation or Prosecution.**

(1) Any attorney admitted to practice before this Court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment, but only by delivering to this Court an affidavit stating that the attorney desires to consent to disbarment and that:

(A) the attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;

(B) the attorney is aware that there is presently pending an investigation or a proceeding involving allegations that there exist grounds for the attorney's discipline, the nature of which the attorney shall specifically set forth;

(C) the attorney acknowledges that the material facts so alleged are true; and

(D) the attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend himself or herself.

(2) Upon receipt of the required affidavit, this Court shall enter an order disbaring the attorney.

(3) The order disbaring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of this rule shall not be publicly disclosed or made available for use in any other proceedings except upon order of this Court.

**(g) Reinstatement.**

(1) *After Disbarment or Suspension.* An attorney suspended for six months or less shall be automatically reinstated at the end of the period of suspension upon the filing with the Court of an affidavit of compliance with the provisions of the order. An attorney suspended for more than six months or disbarred may not resume practice until reinstated by order of this Court.

(2) *Time of Application Following Disbarment.* A person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least five years from the effective date of disbarment.

(3) *Hearing on Application.* Petitions for reinstatement by a disbarred or suspended attorney under this rule shall be filed with the Chief Judge of this Court. Upon receipt of the petition, the Chief Judge shall promptly refer the petition to counsel and shall assign the matter for hearing within 60 days before one or more Judges of this Court, provided, however, that if the disciplinary proceeding was predicated upon the complaint of a Judge of this Court, the hearing shall be conducted before a panel of three other Judges of this Court appointed by the Chief Judge, or if there are less than three Judges eligible to serve, or the Chief Judge was the complainant, by the Chief Judge of the Court of Appeals of this circuit. The Judge or Judges assigned to the matter shall, within 30 days after referral, schedule a hearing at which the petitioner shall have the burden of demonstrating clear and convincing evidence of the moral qualifications, competency, and learning in the law required for admission to practice law before this Court, and that resumption of the practice of law

will not be detrimental to the integrity and standing of the bar, or to the administration of justice, or subversive to the public interest.

(4) *Duty of Counsel.* In all proceedings upon a petition for reinstatement, cross-examination of the witnesses of the respondent-attorney and the submission of evidence, if any, in opposition to the petition shall be conducted by counsel.

(5) *Deposit for Costs of Proceeding.* Petitions for reinstatement under this rule shall be accompanied by an advance cost deposit in an amount to be set from time to time by the Court, to cover anticipated costs of the reinstatement proceeding.

(6) *Conditions of Reinstatement.* If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate the attorney, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings, and upon the making of partial or complete restitution to parties harmed by the petitioner whose conduct led to the suspension or disbarment. Provided further, that if the petitioner has been suspended or disbarred for five years or more, reinstatement may be conditioned, in the discretion of the Judge or Judges before whom the matter is heard, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

(7) *Successive Petitions.* No petition for reinstatement under this rule shall be filed within one year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person. No more than two petitions for reinstatement may be filed.

**(h) Attorneys Specially Admitted.** Whenever an attorney applies to be admitted or is admitted to this Court for purposes of a particular proceeding (pro hac vice), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this Court for any alleged misconduct of that attorney arising in the course of or in the preparation for such proceeding.

**(i) Service of Papers and Other Notices.** Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the respondent-attorney at the address shown in the most recent registration. Service of any other papers or notices required by this rule shall be deemed to have been made if such paper or notice is addressed to the respondent-attorney at the address shown on the registration statement or to

counsel or the respondent's attorney at the address indicated in the most recent pleading or other document filed by them in the course of any proceeding.

**(j) Appointment of Counsel.** Whenever counsel is to be appointed pursuant to this rule to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a disciplined attorney, this Court may instead refer the matter to the Minnesota Lawyers Professional Responsibility Board for appropriate investigation, prosecution or other proceedings. If the Board for any reason declines appointment, or if such referral is clearly inappropriate, this Court shall appoint as counsel one or more members of the bar of this Court to investigate allegations of misconduct or to prosecute disciplinary proceedings provided, however, that the respondent-attorney may move to disqualify an attorney so appointed who is or has been engaged as an adversary of the respondent-attorney. This provision, however, does not apply to counsel of the Minnesota Lawyers Professional Responsibility Board. Counsel, once appointed, may not resign unless permission to do so is given by this Court.

**(k) Duties of the Clerk.**

(1) Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime, the Clerk of this Court shall determine whether the Clerk of the Court in which such conviction occurred has forwarded a certificate of such conviction to this Court. If a certificate has not been so forwarded, the Clerk of this Court shall promptly obtain a certificate and file it with this Court.

(2) Upon being informed that an attorney admitted to practice before this Court has been subjected to discipline by another Court, the Clerk of this Court shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this Court and, if not, the Clerk shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this Court.

(3) Whenever it appears that any person convicted of any crime or disbarred or suspended or censured or disbarred on consent by this Court is admitted to practice law in any other jurisdiction or before any other Court, the Clerk of this Court shall, within 14 days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other Court, a certificate of the conviction or a certified exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the defendant or respondent.

(4) The Clerk of this Court shall, likewise, promptly notify the National Discipline Data Bank, operated by the American Bar Association, of any order imposing public discipline upon any attorney admitted to practice before this Court.

**(l) Jurisdiction.** Nothing contained in this rule shall be construed to deny to this Court such powers as are necessary for the Court to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or under Rule 42 of the Federal Rules of Criminal Procedure.

[Adopted effective February 1, 1991; amended December 18, 1997; amended December 1, 2009]

#### **1991 Advisory Committee's Note to LR 83.6**

The following preface preceded the text of former D.Minn. Local Rule 1(F) (1987), which was the predecessor of LR 83.6. The Advisory Committee adopts it as its Note to LR 83.6:

#### **Statement of Need for Adopting a Rule of Disciplinary Enforcement**

Membership in good standing in the bar of a Court of the United States constitutes a continuing proclamation by the Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and as an officer of the Court.

It is the duty of every attorney admitted to practice before a Court of the United States to conform at all times with the standards imposed upon members of the bar as conditions for the privilege to practice law.

It is the duty of the Court to supervise the conduct of the members of its bar in order to assure the public that those standards are scrupulously adhered to. The proper discharge of that duty requires that the Court have the assistance of counsel to investigate and prosecute where there are appropriate allegations that those standards have been violated. To assure competent and knowledgeable counsel, and to avoid unnecessary duplication of systems and personnel, this rule provides for the appointment of the state disciplinary agency whenever appointment of counsel is required hereunder and such appointment is appropriate.

In order to be admitted to practice in the United States District Court for the District of Minnesota, an attorney must demonstrate membership in good standing before the Minnesota Supreme Court. Consequently, for the purposes of admitting attorneys to practice before this Court, it may and does rely upon the standards for admission of the State Supreme Court. Insofar as discipline of admitted attorneys is concerned, however, the Supreme Court of the United States has held that revocation of a license to practice by state or other Courts may not automatically be relied upon by the Courts of the United States. *Theard v. United States*, 354 U.S. 278 (1957). In *Theard*, the Supreme Court held that while discipline imposed by a state "brings title deeds of high respect," it is not conclusively binding on the federal courts, which, in substance, must satisfy themselves that the attorney's underlying conduct warranted the discipline imposed. *Id.* at 282. For that reason, if there is to be effective discipline within the federal system, effective and appropriate procedures must be developed. This rule is proposed to achieve that purpose as well as to achieve uniformity of procedure by the various federal courts.

## LR 83.7 WITHDRAWAL OF COUNSEL

An attorney may withdraw from a case in which he or she has appeared only as follows:

**(a) By Notice of Withdrawal.** A party's attorney may withdraw from a case by filing and serving a notice of withdrawal, effective upon filing, if:

- (1) multiple attorneys have appeared on behalf of the party; and
- (2) at least one of those attorneys will still be the party's counsel of record after the attorney seeking to withdraw does so.

**(b) By Notice of Withdrawal and Substitution.** A party's attorney may withdraw from a case by filing and serving a notice of withdrawal and substitution, effective upon filing, if:

- (1) the notice includes:
  - (A) a statement by substituted counsel that serves as substituted counsel's notice of appearance and affirms that he or she represents the party; and
  - (B) the names, addresses, and signatures of the withdrawing attorney and substituted counsel;
- (2) the withdrawal and substitution will not delay the trial or other progress of the case; and
- (3) the notice is filed and served:
  - (A) in a civil case, at least 90 days before trial; or
  - (B) in a criminal case, at least 30 days before trial.

**(c) By Motion.** An attorney who seeks to withdraw otherwise than under LR 83.7(a) or (b) must move to withdraw and must show good cause. The attorney must notify his or her client of the motion.

[Adopted effective February 1, 1991; amended January 31, 2011]

## 2011 Advisory Committee's Notes

The language of LR 83.7 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Subsection (a) was changed to clarify that it is not necessary to file a motion to withdraw if an attorney's withdrawal will not cause a party to lose legal representation.

### LR 83.8 STUDENT PRACTICE

**(a) Scope.** A law student who represents a client in connection with a matter in this court must comply with this rule.

**(b) Student requirements.** A law student may practice under this rule as follows:

(1) The law student must be supervised by a member of this court's bar. The supervisor must:

(A) assume full responsibility for the law student's work;

(B) accompany the law student to, and be prepared to assist the law student at, every court appearance; and

(C) appear as an attorney of record in the same case in which the law student appears.

(2) The law student must be enrolled in a law school accredited by the American Bar Association.

(3) The law student must have completed the equivalent of at least two semesters of full-time study.

(4) The law student must:

(A) be enrolled for credit in a law-school supervised program and the law student's work must be under the supervision of that program; or

(B) be a paid or unpaid intern representing any state, local, or other governmental unit or agency.

(5) The law student must not accept compensation in connection with the matter, except that a paid intern may receive compensation from his or her employer. But the law-school supervised program in which the law

student is enrolled may accept compensation other than from a client, such as a Criminal Justice Act payment.

**(c) Supervising-attorney requirements.** The attorney supervising the law student must do the following:

- (1) Verify that the law student meets the requirements of LR 83.8(b);
- (2) Complete the student-practice certification form provided by the clerk and file it with the clerk's office; and
- (3) File a copy of the student-practice certification form in any case in which the law student appears.

**(d) Effect of certification.** A completed student-practice certification form is effective for 12 months after the date it is filed with the clerk's office, unless the chief judge revokes the certification.

**(e) Revocation.** The chief judge may at any time revoke student-practice certification by sending written notice to the supervising attorney and the student.

[Adopted effective February 1, 1991; amended November 18, 2013.]

#### **2013 Advisory Committee's Note to LR 83.8**

The language of LR 83.8 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Local Rule 83.8 has also been amended to broaden the category of eligible law students who may practice before the court to include paid or unpaid interns or externs of a government agency. In addition, LR 83.8 has been amended to streamline the procedure to allow a law student to practice by having the supervising attorney, rather than the law school, certify that a law student is eligible to practice under this rule.

Before a law student may practice in any matter in this court, the supervising attorney must complete and submit the student-certification form by emailing it to the clerk's office. The clerk's office will then stamp the form as having been filed and email it back to the attorney. The supervising attorney must then file the stamped form in each case in which the law student appears.

#### **LR 83.10 CRIMINAL SENTENCING**

**(a) Plea Agreements and Sentencing Stipulations.** Before a defendant enters a guilty plea pursuant to a plea agreement, the defendant and the government must make every effort to resolve material disputes and thus minimize the need for an evidentiary hearing with respect to sentencing. The parties' resolution of such disputes remains subject to court review and acceptance. When the government and the

defendant agree to a plea pursuant to a plea agreement, they must jointly submit a written plea agreement. The plea agreement must include:

- (1) the maximum potential penalties for the offense (or offenses) to which the defendant agrees to plead guilty;
- (2) the terms of the plea agreement; and
- (3) to the extent possible, stipulations with respect to:
  - (A) the essential elements of the offense (or offenses); and
  - (B) the applicable sentencing guidelines.

**(b) Preparing the Preliminary Presentence Report.** The probation officer must exercise due diligence in conducting the presentence investigation and preparing a preliminary presentence report. Within the reasonable constraints of ongoing investigations and proceedings, the government must exercise due diligence in providing materials to the probation officer for that officer's use in preparing the preliminary presentence report. The probation officer who interviews a defendant as part of a presentence investigation must, on request, give the defendant's attorney notice and a reasonable opportunity to attend the interview.

**(c) Objections to the Preliminary Presentence Report.**

(1) *Time to Object.* By the deadline set by the probation officer in compliance with Fed. R. Crim. P. 32(f)(1), the parties must state in writing any objections to the preliminary presentence report, including objections to material information, sentencing guideline ranges, and policy statements contained in or omitted from the report. A party's written objections must include material information and legal authority supporting the objections, as well as any proposed minor amendments or corrections that do not affect the guideline calculations.

(2) *Serving Objections.* An objecting party must provide a copy of its objections to the opposing party and to the probation officer.

(3) *Untimely Objections.* If a party's objections are untimely, the probation officer must not accept the objections unless the party has received the court's permission to make untimely objections.

**(d) Final Presentence Report, Addendum, and Recommendation.**

(1) After the deadline for objections has passed, the probation officer must — in accordance with Fed. R. Crim. P. 32(f)(3) and (g) — revise the

presentence report as appropriate, prepare an addendum, and submit the final presentence report and addendum to the parties and the court.

(2) The probation officer must submit a confidential sentencing recommendation to the court. Unless the court directs otherwise, the probation officer must not further disclose this recommendation.

**(e) Position Regarding Sentencing.** Within 14 days of the date of the final presentence report, each party must file and serve a document entitled "Position Regarding Sentencing." Two courtesy copies must be provided to the judge and one courtesy copy must be provided to the probation officer. This document must:

(1) set forth the party's position with respect to both the sentencing guidelines and the sentencing factors set forth in 18 U.S.C. § 3553(a);

(2) specifically identify any issues in dispute;

(3) state, with respect to each issue in dispute, the extent to which the court can rely on the final presentence report to resolve the dispute; and

(4) specifically identify any issues as to which the party requests an evidentiary hearing.

**(f) Evidentiary Hearing.**

(1) With respect to contested issues relevant to sentencing, if a party believes that a hearing on an issue is necessary, that party must file and serve a separate motion requesting an evidentiary hearing on the issue. The motion must:

(A) be filed at the same time as the Position Regarding Sentencing;

(B) set forth the contested issue; and

(C) provide an estimate of the time required for the hearing.

(2) At least 7 days before an evidentiary hearing, each party must provide the judge, the opposing party, and the probation officer with a witness list and an exhibit list.

**(g) Response to Position Regarding Sentencing; Motion for Downward Departure.**

(1) At least 7 days before sentencing, each party may file and serve a response to the opposing party's Position Regarding Sentencing. Two courtesy copies must be provided to the judge and one courtesy copy must be provided to the probation officer.

(2) If the government intends to move for a downward departure under § 5K1.1 of the Sentencing Guidelines or under 18 U.S.C. § 3553(e), it must do so at least 7 days before sentencing. The government's motion must be filed under seal and served on the defendant. The government must provide two courtesy copies to the judge and one courtesy copy to the probation officer.

**(h) Alternative Procedures in Complex Cases.** A party may request permission from the judge to deviate from the procedures and deadlines set forth in this rule. A party making such a request must explain why the complexity or particular nature of the case justifies the request.

**(i) Court's Authority.** Nothing in this rule restricts the court's authority to accept or to reject a plea agreement or to accept or to reject a stipulation of fact.

**(j) Non-Disclosure.** Nothing in this rule requires the disclosure of any portions of the presentence report that are not discoverable under Fed. R. Crim. P. 32.

[Adopted effective February 1, 1991; amended November 1, 1996; amended May 17, 2004; amended September 24, 2009; amended May 14, 2013]

#### **2013 Advisory Committee's Note to LR 83.10**

The language of LR 83.10 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Revised LR 83.10 does, however, include a handful of substantive changes. Specifically, revised subsection (a) clarifies that parties include in plea agreements "stipulations" of any kind, rather than just "stipulations of fact." The subsection (a)(2) requirement that the agreement include its terms is not intended to preclude the submission of information concerning the plea agreement under seal. Revised subsection (f) provides that either party may request an evidentiary hearing about a contested sentencing-related issue, regardless of whether the requesting party bears the burden of proof on the issue.

Further, the provisions relating to deadlines for objections to presentence reports and deadlines for sentencing position papers have been modified slightly to conform better to current practice and to Fed. R. Crim. P. 32.

With respect to objections, under revised LR 83.10(c), the probation officer will establish a specific deadline for serving objections in every case. That deadline will be communicated along with the preliminary presentence report. The deadline will always be at least 14 days from the date of the report, in accordance with Fed. R. Crim. P. 32(f)(1). An additional 3 days will typically be added to the deadline if

the report is delivered by mail; if that adjusted deadline falls on a weekend or holiday, the deadline will be moved to the next business day.

The deadline for sentencing position papers under the revised rule is 14 days from the date of the final presentence report, regardless of how that report is delivered.

The following table illustrates the timelines in revised LR 83.10:

<b>Day</b>	<b>Event</b>
Day X	Probation officer issues preliminary presentence report, including deadline for objections.
Deadline set by probation officer (at least Day X + 14 days, and sometimes Day X + 17 or more days)	Parties serve objections.
Day Y	Probation officer issues final presentence report with addendum.
Day Y + 14 days	Parties file Positions Regarding Sentencing.  Parties file motions for an evidentiary hearing (if one is sought).
Day Z	Date of sentencing hearing.
At least 7 days before Day Z	Optionally, parties file responses to Positions Regarding Sentencing.  Optionally, government moves for downward departure.

#### **2009 Advisory Committee’s Note to LR 83.10**

[To avoid confusion, the 2013 advisory committee has deleted the table of timelines that previously appeared in the 2009 committee note.]

#### **1991 Advisory Committee’s Note to LR 83.10**

LR 83.10 supersedes the Court’s Revised Order Re Sentencing Procedures Under the Sentencing Reform Act of 1984, dated October 30, 1989.

The purpose of LR 83.10 is to provide adequate time for preparation of the presentence report by the United States Probation Office, for disclosure of the presentence report to the parties, for the filing of presentence submissions by the parties, and to otherwise facilitate administration of the sentencing guidelines.

[A table provided in the 1991 Advisory Committee Notes was removed to avoid confusion with later changes. Please refer to the 2013 committee note for a table illustrating the timelines in LR 83.10.]

### **LR 83.11 COURT ADMINISTRATION**

**(a) Divisions.** The State of Minnesota constitutes one judicial district, divided into six divisions.

**(b) Case Assignment.** The court assigns cases to particular divisions and particular judges in accordance with the Order for Assignment of Cases that the court's district judges have adopted. The district judges may modify this order from time to time as they see fit.

**(c) Offices of the Clerk.**

(1) The Clerk of Court maintains offices in St. Paul, Minneapolis, Duluth, and Fergus Falls. All offices are generally open from 8:00 a.m. to 5:00 p.m., Monday through Friday. But the offices are closed on the following holidays:

- New Year's Day;
- Martin Luther King Jr.'s Birthday;
- Washington's Birthday;
- Memorial Day;
- Independence Day;
- Labor Day;
- Columbus Day;
- Veterans' Day;
- Thanksgiving Day;
- the Friday after Thanksgiving Day; and
- Christmas Day.

(2) In general, the clerk maintains the files for each pending matter in electronic format. A party may file papers relative to any matter in any office, and a party may get copies of publicly filed papers from any office.

**(d) Calendars.** The court operates on an individual calendar system. Questions about motions, hearing or trial dates, or other issues related to a particular case should be addressed to the courtroom deputy for the judge to whom the case has been assigned.

[Adopted effective February 1, 1991; amended November 1, 1996; amended October 29, 2003; amended May 14, 2013]

**2013 Advisory Committee's Note to LR 83.11**

The language of LR 83.11 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Subsection (c) (former subsection (b)) has been revised to better reflect the court's current practices with respect to what offices are open, what holidays are observed, and how files are maintained.

**2003 Advisory Committee's Note to LR 83.11**

The first paragraph of LR 83.11 (a) was amended in 2003 to conform to the current Court procedure of assigning cases to divisions and judges pursuant to the Order that may be revised from time to time.

### **1991 Advisory Committee's Note To LR 83.11**

The division system of the United States District Court for the District of Minnesota is a product of the Courts' modification of the division system established by statute to fit the practicalities of present judicial activity within the district.

By statute, Minnesota is divided into six divisions. 28 U.S.C. § 103. The statute provides that terms of Court shall be held in Winona, Mankato, St. Paul, Minneapolis, Duluth, and Fergus Falls. A District Court retains the discretion to pretermitt any regular session of Court for insufficient business or other good cause. 28 U.S.C. § 140.

The Court on two occasions has utilized its pretermission authority to effectively eliminate trials or hearings in three divisions. By an Order dated December 2, 1960, the Court pretermitted the terms of Court in the First and Second Divisions. In an order dated January 31, 1990, the Court pretermitted the terms of Court in the Sixth Division. The Judges of the Court maintain chambers in the Third Division and Fourth Division. Cases emanating from counties of the First, Second, Third, Fourth and Sixth Divisions are assigned to either the Third or fourth Division based upon the location of the chambers of the Judge to whom the case is assigned. Cases emanating from the Fifth Division are assigned to the Fifth Division regardless of the location of the chambers of the Judge to whom the case is assigned.

The remaining significance of the division system in Minnesota is two-fold. First, petit juries are selected by division. That is, cases assigned to the Third Division have their jury drawn from individuals residing in counties that make up the Third Division. The same is true in the Fourth and Fifth Divisions. Second, although the Judges of the Court maintain offices in the Third and Fourth Divisions, terms of Court are held in the Fifth Division for matters assigned to the Fifth Division.

### **LR 83.12 COMPLAINTS AGAINST A JUDGE**

A person may file with the Clerk of the United States Court of Appeals for the Eighth Circuit a complaint against a judge alleging misconduct or disability. Such complaints are governed by

- 28 U.S.C. § 372(c);
- the Judicial-Conduct and Judicial-Disability Rules adopted by the Judicial Conference of the United States; and
- the Rules Governing Complaints of Judicial Misconduct and Disability adopted by the Judicial Council of the Eighth Circuit.

[Adopted effective November 1, 1996; amended May 14, 2013]

### **2013 Advisory Committee's Note to LR 83.12**

The language of LR 83.12 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments. In addition, LR 83.12 has been

revised to refer not only to the relevant Eighth Circuit rules, but also to the relevant rules of the Judicial Conference of the United States.

### **1996 Advisory Committee's Note to LR 83.12**

LR 83.12 was added in the 1996 amendments upon consideration by the Committee of the request of Judge William J. Bauer, Chairman of the Committee to Review Circuit Council Conduct and Disability Orders of the Judicial Conference of the United States, that federal district courts include in their Local Rules a reference to the procedure established by 28 U.S.C. § 372(c) and to the Circuit Court rules governing the process. The Judicial Council of the Eighth Circuit agreed with this proposal at its meeting of December 6, 1994. See letter from the Honorable William J. Bauer to the Honorable Richard S. Arnold, October 14, 1994; letter from the Honorable Richard S. Arnold to the Honorable William J. Bauer, December 7, 1994.

### **LR 83.13 COURT APPOINTEES**

**(a) Scope.** This rule applies to any person whom a judge appoints to assist the court in a matter. Appointees under this rule may include, for example, special masters, receivers, referees, trustees, commissioners, court-appointed experts, investigators, mediators, and arbitrators.

**(b) Conflicts of Interest.**

(1) If an appointee becomes aware of any circumstances that might constitute, or might reasonably appear to constitute, a conflict of interest, the appointee must immediately inform the appointing judge of all facts relevant to those circumstances. The appointing judge must then determine what, if any, action should be taken.

(2) A “conflict of interest” includes any set of circumstances that affects, or might reasonably appear to affect, an appointee’s ability to act impartially in the matter for which he or she was appointed.

**(c) Complaints.**

(1) A complaint about an appointee’s conduct must be made in writing to the appointing judge. The complaint must include a detailed description of the facts and circumstances giving rise to the complaint and must expressly identify the statute, rule, regulation, canon, or other authority on which the complaint is based.

(2) The judge must permit the appointee and the parties to respond to the complaint.

(3) The judge must review the complaint, determine whether the appointee committed misconduct, and decide what action, if any, to take.

The judge may take appropriate action to protect the rights and interests of anyone who may have been affected by an appointee's misconduct.

**(d) Court-Initiated Discipline.** An appointing judge may, at any time, independently review an appointee's conduct and take appropriate action.

[Adopted effective January 3, 2000; amended May 14, 2013; amended November 18, 2013]

#### **2013 Advisory Committee's Note to LR 83.13**

The language of LR 83.13 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

After the May 2013 amendments, the language in subsection (b) was further amended to clarify that an appointee is obligated to inform the judge of potential conflicts of interests when circumstances "might reasonably appear" to affect an appointee's ability to act impartially.

#### **1999 Advisory Committee's Note to LR 83.13**

The Committee concluded that allegations of misconduct by court appointees will most often arise out of either actual or apparent conflicts of interest. For this reason, the rule expressly requires appointees to disclose any such conflicts to the appointing judge. The Committee further concluded that it would not be feasible or necessary to develop a comprehensive code of ethical conduct for all court appointees. Such appointees will be expected to follow the broad moral and ethical principles that guide the conduct of lawyers and judicial officers.

The Committee recognizes that judges must retain the authority to manage and control their cases. The automatic assignment of an "outside judge" to consider complaints against a court appointee could adversely affect that authority. If a party or the appointing judge believes that some other judge should consider a complaint against an appointee, the general rules regarding recusal would be applicable.

This rule confirms the appointing judge's authority to act on a complaint of misconduct by an appointee. The rule expressly recognizes the judge's authority to (a) preserve the integrity of the court by taking appropriate disciplinary action against the appointee, and (b) protect litigants whose interests may have been adversely affected by the misconduct of an appointee. A judge's response to misconduct by an appointee may include, without being limited to, termination of the appointment, imposition of sanctions, application of the power of contempt, recommending to other judges that the appointee should be barred from future appointments in this District, initiation of attorney disciplinary proceedings in this District pursuant to L.R. 83.6(e), referring the matter to the Minnesota Office of Lawyers Professional Responsibility, or referring the matter to the United States Attorney or the Minnesota Attorney General to consider criminal charges. Complaints regarding fee issues (in cases involving special masters) should be raised and addressed under Fed.R.Civ.P. 53. Any party who is dissatisfied with a judge's action on a complaint against an appointee would retain the same right to appeal that exists for any other action taken by a district court judge.

**FORM 1 DECLARATION OF ADMISSIONS TO PRACTICE**

In Re

Disciplinary No.

I, \_\_\_\_\_, am the attorney who has been served with an order to show cause why disciplinary action should not be taken in the above captioned matter.

I am a member of the bar of this Court.

I have been admitted to practice before the following state and federal court, in the year, and under the license record numbers shown below:

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_ (Date)

(Signature)

(Full name – typed or printed)

(Address of Record)

This declaration must be signed, and delivered to the Court with the attorney's answer to the order to show cause or any waiver of an answer. Failure to return this declaration may subject an attorney to further disciplinary action. Under 28 U.S.C. § 1746, this declaration under penalty of perjury has the same force and effect as a sworn declaration made under oath.

**FORM 2 PRESENTENCE REPORT NOTICE**

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
\_\_\_\_\_ DIVISION  
Criminal No.

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 \_\_\_\_\_, )  
 )  
 Defendant. )

**PRESENTENCE REPORT NOTICE**

The presentence report in the above-captioned case is hereby forwarded to counsel for all parties. Pursuant to D. Minn. LR 83.10 concerning Sentencing Procedures Under the Sentencing Reform Act of 1984, the parties and their counsel are also hereby notified of the following deadlines:

1. Written correspondence identifying objections and proposed amendments to the presentence report are due on or before \_\_\_\_\_; and
2. Position pleadings, if required, are due on or before \_\_\_\_\_.

Dated: \_\_\_\_\_

United States Probation Officer

**FORM 3 RULE 26(f) REPORT AND PROPOSED SCHEDULING ORDER**

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Name of Plaintiff,

Plaintiff,

v.

Name of Defendant,

Defendant.

CIVIL FILE NO. \_\_\_\_\_

RULE 26(f) REPORT

The parties/counsel identified below conferred as required by Fed. R. Civ. P. 26(f) and the Local Rules, on \_\_\_\_\_, and prepared the following report.

The initial pretrial conference required under Fed. R. Civ. P. 16 and LR 16.2 is scheduled for \_\_\_\_\_, 20\_\_\_\_, before the United States Magistrate Judge \_\_\_\_\_ in Room \_\_\_\_\_, of the U.S. Courthouse in, \_\_\_\_\_, Minnesota. The parties [request/do not request] that the pretrial be held by telephone.

(a) Description of the Case.

- (1) Concise factual summary of plaintiff's claims:
- (2) Concise factual summary of defendant's claims/defenses:
- (3) Statement of jurisdiction (including statutory citations):
- (4) Summary of factual stipulations or agreements:
- (5) Statement of whether a jury trial has been timely demanded by any party:
- (6) Statement as to whether the parties agree to resolve the matter under the Rules of Procedure for Expedited Trials of the United States District Court, District of Minnesota, if applicable:

(b) Pleadings.

Statement as to whether all process has been served, all pleadings filed and any plan for any party to amend pleadings or add additional parties to the action:

(c) Fact Discovery.

The parties recommend that the Court establish the following fact discovery deadlines and limitations:

- (1) The parties must make their initial disclosures under Fed. R. Civ. P. 26(a)(1) on or before \_\_\_\_\_.
- (2) The parties must complete any physical or mental examinations under Fed. R. Civ. P. 35 by \_\_\_\_\_.
- (3) The parties must commence fact discovery procedures in time to be completed by \_\_\_\_\_.
- (4) The parties propose that the Court limit the use and numbers of discovery procedures as follows:
  - (A) \_\_\_\_\_ interrogatories;
  - (B) \_\_\_\_\_ document requests;
  - (C) \_\_\_\_\_ factual depositions;
  - (D) \_\_\_\_\_ requests for admissions;
  - (E) \_\_\_\_\_ Rule 35 medical examinations; and
  - (F) \_\_\_\_\_ other.

(d) Expert Discovery.

- (1) The parties anticipate that they [will/will not] require expert witnesses at the time of trial.
  - (A) The plaintiff anticipates calling \_\_\_\_\_ (number) experts in the fields of:  
\_\_\_\_\_.
  - (B) The defendant anticipates calling \_\_\_\_\_ (number) experts in the fields of:  
\_\_\_\_\_.

(2) The parties propose that the Court establish the following plan for expert discovery:

(A) Initial experts.

- (i) The identity of any expert who may testify at trial regarding issues on which the party has the burden of persuasion must be disclosed on or before \_\_\_\_\_.
- (ii) The initial expert written report completed in accordance with Fed. R. Civ. P. 26(a)(2)(B) must be served on or before \_\_\_\_\_.

(B) Rebuttal experts.

- (i) The identity of any experts who may testify in rebuttal to any initial expert must be disclosed on or before \_\_\_\_\_.
- (ii) Any rebuttal expert's written report completed in accordance with Fed. R. Civ. P. 26(a)(2)(B) must be served on or before \_\_\_\_\_.

(3) All expert discovery must be completed by \_\_\_\_\_.

(e) Other Discovery Issues.

(1) Protective Order. The parties have discussed whether they believe that a protective order is necessary to govern discovery and jointly submit a [proposed protective order/report identifying areas of disagreement].

(The parties are encouraged, though not required, to use Form 6 as a template for a proposed protective order.)

(2) Discovery of Electronically Stored Information. The parties have discussed issues about disclosure or discovery of electronically stored information as required by Fed. R. Civ. P. 26(f), including the form or forms in which it should be produced and inform the Court of the following agreements or issues:

(3) Claims of Privilege or Protection. The parties have discussed issues about claims of privilege or of protection as trial-preparation materials as required by Fed. R. Civ. P. 26(f), including whether the parties agree to a procedure to assert these claims after production and request the Court to include the following agreement in the scheduling order:

(f) Proposed Motion Schedule.

The parties propose the following deadlines for filing motions:

- (1) Motions seeking to join other parties must be filed and served by \_\_\_\_\_.
- (2) Motions seeking to amend the pleadings must be filed and served by \_\_\_\_\_.
- (3) All other non-dispositive motions must be filed and served by \_\_\_\_\_.
- (4) All dispositive motions must be filed and served by \_\_\_\_\_.

(g) Trial-Ready Date.

- (1) The parties agree that the case will be ready for trial on or after \_\_\_\_\_.
- (2) The parties propose that the final pretrial conference be held on or before \_\_\_\_\_.

(h) Insurance Carriers/Indemnitors.

List all insurance carriers/indemnitors, including limits of coverage of each defendant or statement that the defendant is self-insured.

(i) Settlement.

- (1) The parties will discuss settlement before the initial pretrial conference, by the plaintiff making a written demand for settlement and each defendant making a written response/offer to the plaintiff's demand.
- (2) The parties propose that a settlement conference be scheduled to take place before \_\_\_\_\_.
- (3) The parties have discussed whether alternative dispute resolution will be helpful to the resolution of this case and recommend the following:

(j) Trial by Magistrate Judge.

The parties [have/have not] agreed to consent to jurisdiction by the Magistrate Judge under 28 U.S.C. § 636(c). (If the parties agree to consent, file the consent with the Rule 26(f) Report.)

DATE: \_\_\_\_\_

\_\_\_\_\_  
 Plaintiff's Counsel  
 License #  
 Address  
 Phone #

DATE: \_\_\_\_\_

\_\_\_\_\_  
Defendant's Counsel  
License #  
Address  
Phone #

**FORM 4 RULE 26(f) REPORT AND PROPOSED SCHEDULING ORDER (PATENT CASES)**

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Name of Plaintiff,

Plaintiff,

CIVIL FILE NO. \_\_\_\_\_

v.

RULE 26(f) REPORT  
(PATENT CASES)

Name of Defendant,

Defendant.

---

The parties/counsel identified below conferred as required by Fed. R. Civ. P. 26(f) and the Local Rules, on \_\_\_\_\_, and prepared the following report.

The initial pretrial conference required under Fed. R. Civ. P. 16 and LR 16.2 is scheduled for \_\_\_\_\_, 20\_\_\_\_, before the United States Magistrate Judge \_\_\_\_\_ in Room \_\_\_\_\_, of the U.S. Courthouse in \_\_\_\_\_, Minnesota. The parties [request/do not request] that the initial pretrial conference be held by telephone.

(a) Description of the Case.

- (1) Concise factual summary of plaintiff's claims, including the patent number(s), date(s) of patent(s), and patentee(s):
- (2) Concise factual summary of defendant's claims/defenses:
- (3) Statement of jurisdiction (including statutory citations):
- (4) Summary of factual stipulations or agreements:
- (5) Statement of whether a jury trial has been timely demanded by any party:

(b) Pleadings.

Statement as to whether all process has been served, all pleadings filed and any plan for any party to amend pleadings or add additional parties to the action:

(c) Discovery and Pleading of Additional Claims and Defenses.

- (1) Discovery is permitted with respect to claims of willful infringement and defenses of patent invalidity or unenforceability not pleaded by a party, where the evidence needed to support these claims or defenses is in whole or in part in the hands of another party.
- (2) Once a party has given the necessary discovery, the opposing party may seek leave of Court to add claims or defenses for which it alleges, consistent with Fed. R. Civ. P. 11, that it has support, and such support must be explained in the motion seeking leave. Leave must be liberally given where prima facie support is present, provided that the party seeks leave as soon as reasonably possible following the opposing party providing the necessary discovery.

(d) Fact Discovery.

The parties recommend that the Court establish the following fact discovery deadlines and limitations:

- (1) The parties must make their initial disclosures under Fed. R. Civ. P. 26(a)(1) on or before \_\_\_\_\_.
- (2) The parties must commence fact discovery procedures in time to be completed by \_\_\_\_\_.
- (3) The parties propose that the Court limit the use and numbers of discovery procedures as follows:
  - (A) \_\_\_\_\_ interrogatories;
  - (B) \_\_\_\_\_ document requests;
  - (C) \_\_\_\_\_ factual depositions;
  - (D) \_\_\_\_\_ requests for admissions; and
  - (E) \_\_\_\_\_ other.

(e) Discovery Relating to Claim Construction Hearing.

(1) Plaintiff's Claim Chart.

- (A) Plaintiff's claim chart must be served on or before \_\_\_\_\_.
- (B) Plaintiff's claim chart must provide a complete and detailed explanation of:

- (i) which claim(s) of its patent(s) it alleges are being infringed;
- (ii) which specific products or methods of defendant's it alleges literally infringe each claim;
- (iii) where each element of each claim listed in paragraph (e)(1)(B)(i) is found in each product or method listed in paragraph (e)(1)(B)(ii), including the basis for each contention that the element is present; and
- (iv) if there is a contention by plaintiff that there is infringement of any claims under the doctrine of equivalents, plaintiff must separately indicate this on its claim chart and, in addition to the information required for literal infringement, plaintiff must also explain each function, way, and result that it contends are equivalent, and why it contends that any differences are not substantial.

Plaintiff may amend its claim chart only by leave of the Court for good cause shown.

(2) Defendant's Claim Chart.

- (A) Defendant's claim chart must be served on or before \_\_\_\_\_.
- (B) Defendant's claim chart must indicate with specificity which elements on plaintiff's claim chart it admits are present in its accused device or process, and which it contends are absent, including in detail the basis for its contention that the element is absent. And, as to the doctrine of equivalents, Defendant must indicate on its chart its contentions concerning any differences in function, way, and result, and why any differences are substantial.

Defendant may amend its claim chart only by leave of Court for good cause shown.

(3) Exchange of Claim Terms and Proposed Constructions.

- (A) On or before \_\_\_\_\_, the parties must simultaneously exchange a list of claim terms, phrases, or clauses that each party contends should be construed by the Court.
- (B) Following the exchange of the list of claim terms, phrases, or clauses, but before \_\_\_\_\_, the parties must meet and confer for the purpose of finalizing a list of claim terms, phrases or clauses, narrowing or resolving differences, and facilitating the ultimate preparation of a joint claim construction statement, and determining whether to request a pre-claim construction conference.
- (C) During the meet and confer process, the parties must exchange their preliminary proposed construction of each claim term, phrase or clause which

the parties collectively have identified for claim construction purposes and will make this exchange on or before \_\_\_\_\_.

- (D) When exchanging their preliminary claim constructions, the parties must provide a preliminary identification of extrinsic evidence, including without limitation: dictionary definitions, citations to learned treatises and prior art, and testimony of percipient or expert witnesses that they contend support their respective claim constructions.
- (i) The parties must identify each such item of extrinsic evidence by production number or produce a copy of any such item not previously produced.
  - (ii) With respect to any such witness, percipient or expert, the parties must also provide a brief description of the substance of that witness' proposed testimony.

#### (4) Joint Patent Case Status Report.

Following the meet and confer process outlined in paragraph (e)(3)(B)-(D), above, but no later than \_\_\_\_\_, the parties must file a joint patent case status report. The joint patent case status report must address the following:

- (A) whether the parties request a claim construction hearing to determine claim interpretation. If the parties disagree about whether a claim construction hearing should be held, the parties must state their respective positions and reasoning; and
- (B) whether the parties request a pre-claim construction conference with the Court and if so, whether they request that the pre-claim construction conference occur before or after the joint claim construction statement is filed.
  - (i) If the parties request that the pre-claim construction conference occur before the joint claim construction statement is filed, the parties must state why an early conference is necessary.
  - (ii) If the parties disagree about whether a pre-claim construction conference should be held, the parties must provide their respective positions and reasoning.
  - (iii) If the parties request a pre-claim construction conference, the parties must submit a summary of the claim construction issues the parties wish to discuss at the conference.

#### (5) Joint Claim Construction Statement.

- (A) Filing the joint claim construction statement.

- (i) The joint claim construction statement must be filed with the joint patent case status report, unless the joint patent case status report requests that the pre-claim construction conference occur before the joint claim construction statement is filed.
  - (ii) If the Court does not respond to the request to schedule a pre-claim construction conference within 30 days after the joint patent case status report is filed, the parties must file a joint claim construction statement.
- (B) Content of the joint claim construction statement. The joint claim construction statement must contain the following information:
- (i) the construction of the claim terms, phrases, or clauses on which the parties agree;
  - (ii) each party's proposed construction of each disputed claim term, phrase, or clause together with an identification of all references from the specification of prosecution history to support that construction, and an identification of any extrinsic evidence known to the party on which it intends to rely either in support of its proposed construction of the claim or to oppose any other party's proposed construction;
  - (iii) whether any party proposes to call one or more witnesses, including any experts, at the claim construction hearing; the identity of each witness; and for each expert, a summary of the opinion to be offered in sufficient detail to permit a meaningful deposition of that expert; and
  - (iv) whether the parties believe that a technology tutorial would be helpful for the Court and, if so, the proposed timing and format of the tutorial.
- (6) Claim Construction Hearing Order. If the Court schedules a claim construction hearing, the Court must issue an order before the hearing, addressing:
- (A) the date and time for the claim construction hearing;
  - (B) whether it will receive extrinsic evidence, and if so, the particular evidence it will receive;
  - (C) whether the extrinsic evidence in the form of testimony must be the affidavits already filed or in the form of live testimony from the affiants; and
  - (D) a briefing schedule.
- (f) Discovery Relating to Validity/Prior Art .

(1) Defendant's Prior Art Statement.

(A) Within \_\_\_\_\_ days of receiving plaintiff's claim chart exchanged under paragraph (e)(1), defendant must serve a prior art statement, listing all of the prior art on which it relies and a complete and detailed explanation of its allegations with respect to:

(i) which claim(s) alleged to be infringed are invalid;

(ii) which specific prior art, if any, invalidates each claim;

(iii) where in such prior art each element of the allegedly invalid claims may be found; and

(iv) whether a basis for invalidity other than prior art is alleged, specifying what the basis is and whether such allegation is based upon 35 U.S.C. §§ 101, 102, 103, and 112, or another statutory provision.

(B) Defendant may amend its prior art statement only by leave of the Court for good cause shown.

(2) Plaintiff's Prior Art Statement.

(A) Within \_\_\_\_\_ days of its receipt of defendant's prior art statement, plaintiff must serve a prior art statement, responding specifically to each allegation of invalidity set out in defendant's prior art statement, including its position on why the prior art or other statutory reference does not invalidate the asserted patent claims.

(B) Plaintiff may amend its prior art statement only by leave of the Court for good cause shown.

(3) Form of Prior Art Statements. A prior art statement may be submitted in the form of expert reports. If a prior art statement is submitted in the form of expert reports, the deadlines in paragraph (f) govern and are not extended by any different expert discovery deadlines.

(g) Expert Discovery.

(1) The parties anticipate that they [will/will not] require expert witnesses at the time of trial.

(A) The plaintiff anticipates calling \_\_\_\_\_(number) experts in the fields of:  
\_\_\_\_\_.

(B) The defendant anticipates calling \_\_\_\_\_ (number) experts in the fields of:  
\_\_\_\_\_.

(2) The parties propose that the Court establish the following plan for expert discovery:

(A) Identification of experts.

(i) Each party must identify to the opposing party the experts who will provide a report concerning the issues on which that party has the burden of persuasion no later than 15 days after the Court issues the claim construction order;

(ii) If the Court states that it will not issue a claim construction order, the parties must identify experts who will provide a report concerning the issues on which that party has the burden of persuasion by the close of fact discovery; or

(iii) Alternate recommended date: \_\_\_\_\_.

(B) Initial expert reports. Initial expert reports must be prepared in accordance with Fed. R. Civ. P. 26(a)(2)(B) and address the issues on which that party has the burden of persuasion.

(i) The parties must exchange their initial expert reports no later than 30 days after the Court issues the claim construction order;

(ii) If the Court states that it will not issue a claim construction order, the parties must exchange their initial expert reports no later than 30 days after the close of fact discovery; or

(iii) Alternate recommended date: \_\_\_\_\_.

(C) Rebuttal expert reports. Rebuttal expert reports must be prepared in accordance with Fed. R. Civ. P. 26(a)(2)(B).

(i) Rebuttal expert reports must be exchanged no later than within 30 days after the initial expert reports are exchanged; or

(ii) Alternate recommended date: \_\_\_\_\_.

(D) All expert discovery must be completed by \_\_\_\_\_.

(h) Other Discovery Issues.

(1) Decision on Waiver and Discovery of Privileged Documents. Defendant may postpone the waiver of any applicable attorney-client privilege on topics

relevant to claims of willful infringement, if any, until \_\_\_\_\_, provided that all relevant privileged documents are produced no later than \_\_\_\_\_. All additional discovery regarding the waiver will take place after \_\_\_\_\_ and must be completed by \_\_\_\_\_.

(2) Proposal to Conduct Discovery in Phases. The parties have met and discussed whether any discovery should be conducted in phases to reduce expenses or make discovery more effective and present the following joint/individual proposals:

(3) Protective Order. The parties have discussed whether they believe that a protective order is necessary to govern discovery and jointly submit a [proposed protective order/report identifying areas of disagreement].

(The parties are encouraged, though not required, to use Form 5 as a template for a proposed protective order.)

(4) Discovery of Electronically Stored Information. The parties have discussed issues about disclosure or discovery of electronically stored information as required by Fed. R. Civ. P. 26(f), including the form or forms in which it should be produced, and inform the Court of the following agreements or issues:

(5) Claims of Privilege or Protection. The parties have discussed issues about claims of privilege or of protection as trial-preparation materials as required by Fed. R. Civ. P. 26(f), including whether the parties agree to a procedure to assert these claims after production and request the Court to include the following agreement in the scheduling order:

(i) Discovery Definitions.

In responding to discovery requests, each party must construe broadly terms of art used in the patent field (e.g., "prior art", "best mode", "on sale"), and read them as requesting discovery relating to the issue as opposed to a particular definition of the term used. Compliance with this provision is not satisfied by the respondent including a specific definition of the term of art in its response, and limiting its response to that definition.

(j) Proposed Motion Schedule.

The parties propose the following deadlines for filing motions:

(1) Motions seeking to join other parties must be filed and served by \_\_\_\_\_.

(2) Motions seeking to amend the pleadings must be filed and served by \_\_\_\_\_.

(3) All other non-dispositive motions must be filed and served by \_\_\_\_\_.

(4) All dispositive motions must be filed and served by \_\_\_\_\_.

(k) Trial-Ready Date.

(1) The parties agree that the case will be ready for trial on or after \_\_\_\_\_.

(2) The parties propose that the final pretrial conference be held on or before \_\_\_\_\_.

(l) Settlement.

(1) The parties will discuss settlement before the initial pretrial conference, by the plaintiff making a written demand for settlement and each defendant making a written response/offer to plaintiff's demand.

(2) The parties propose that a settlement conference be scheduled to take place before \_\_\_\_\_.

(3) The parties have discussed whether alternative dispute resolution will be helpful to the resolution of this case and recommend the following:

(m) Trial by Magistrate Judge.

The parties [have/have not] agreed to consent to jurisdiction by the Magistrate Judge under 28 U.S.C. § 636(c). (If the parties agree to consent, file the consent with the Rule 26(f) Report.)

(n) Patent Procedure Tutorial.

The parties [agree/do not agree] the video "An Introduction to the Patent System," distributed by the Federal Judicial Center, should be shown to the jurors in connection with its preliminary jury instructions.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff's Counsel  
License #  
Address  
Phone #

DATE: \_\_\_\_\_

\_\_\_\_\_  
Defendant's Counsel  
License #  
Address  
Phone #

**FORM 5 STIPULATION FOR PROTECTIVE ORDER**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

[NAME OF PARTY],	)	
	)	Case No. _____
Plaintiff,	)	
	)	
v.	)	STIPULATION FOR
	)	PROTECTIVE ORDER
[NAME OF PARTY],	)	
	)	
Defendant.	)	

Upon stipulation of the parties for an order pursuant to Fed. R. Civ. P. 26(c) that trade secret or other confidential information be disclosed only in designated ways:

1. As used in the Protective Order, these terms have the following meanings:

“Attorneys” means counsel of record;

“Confidential” documents are documents designated pursuant to paragraph 2;

“Confidential - Attorneys’ Eyes Only” documents are the subset of Confidential documents designated pursuant to paragraph 5;

“Documents” are all materials within the scope of Fed. R. Civ. P. 34;

“Written Assurance” means an executed document in the form attached as Exhibit A.

2. By identifying a document “Confidential”, a party may designate any document, including interrogatory responses, other discovery responses, or transcripts, that it in good faith contends to constitute or contain trade secret or other confidential information.

3. All Confidential documents, along with the information contained in the documents, shall be used solely for the purpose of this action, and no person receiving such documents shall, directly or indirectly, transfer, disclose, or communicate in any way the contents of the documents to any person other than those specified in paragraph 4. Prohibited purposes include, but are not limited to, use for competitive purposes or the prosecution of additional intellectual property rights.

4. Access to any Confidential document shall be limited to:

(a) the Court and its officers;

(b) Attorneys and their office associates, legal assistants, and stenographic and clerical employees;

(c) persons shown on the face of the document to have authored or received it;

(d) court reporters retained to transcribe testimony;

[Optional: (e) these inside counsel: [names];]

[Optional: (f) these employees of the parties: [names];]

(g) outside independent persons (i.e., persons not currently or formerly employed by, consulting with, or otherwise associated with any party) who are retained by a party or its attorneys to furnish technical or expert services, or to provide assistance as mock jurors or focus group members or the like, and/or to give testimony in this action.

5. The parties shall have the right to further designate Confidential documents or portions of documents [optional: in the areas of [identify]] as “Confidential - Attorneys’

Eyes Only". Disclosure of such information shall be limited to the persons designated in paragraphs 4(a), (b), (c), (d), (e), and (g).

6. Third parties producing documents in the course of this action may also designate documents as "Confidential" or "Confidential - Attorneys' Eyes Only", subject to the same protections and constraints as the parties to the action. A copy of the Protective Order shall be served along with any subpoena served in connection with this action. All documents produced by such third parties shall be treated as "Confidential - Attorneys' Eyes Only" for a period of 14 days from the date of their production, and during that period any party may designate such documents as "Confidential" or "Confidential - Attorneys' Eyes Only" pursuant to the terms of the Protective Order.

7. Each person appropriately designated pursuant to paragraph 4(g) to receive Confidential information shall execute a "Written Assurance" in the form attached as Exhibit A. Opposing counsel shall be notified at least 14 days prior to disclosure to any such person who is known to be an employee or agent of, or consultant to, any competitor of the party whose designated documents are sought to be disclosed. Such notice shall provide a reasonable description of the outside independent person to whom disclosure is sought sufficient to permit objection to be made. If a party objects in writing to such disclosure within 14 days after receipt of notice, no disclosure shall be made until the party seeking disclosure obtains the prior approval of the Court or the objecting party.

8. All depositions or portions of depositions taken in this action that contain trade secret or other confidential information may be designated "Confidential" or

“Confidential - Attorneys’ Eyes Only” and thereby obtain the protections accorded other “Confidential” or “Confidential - Attorneys’ Eyes Only” documents. Confidentiality designations for depositions shall be made either on the record or by written notice to the other party within 14 days of receipt of the transcript. Unless otherwise agreed, depositions shall be treated as “Confidential - Attorneys’ Eyes Only” during the 14-day period following receipt of the transcript. The deposition of any witness (or any portion of such deposition) that encompasses Confidential information shall be taken only in the presence of persons who are qualified to have access to such information.

9. Any party who inadvertently fails to identify documents as “Confidential” or “Confidential - Attorneys’ Eyes Only” shall have 14 days from the discovery of its oversight to correct its failure. Such failure shall be corrected by providing written notice of the error and substituted copies of the inadvertently produced documents. Any party receiving such inadvertently unmarked documents shall make reasonable efforts to retrieve documents distributed to persons not entitled to receive documents with the corrected designation.

10. Any party who inadvertently discloses documents that are privileged or otherwise immune from discovery shall, promptly upon discovery of such inadvertent disclosure, so advise the receiving party and request that the documents be returned. The receiving party shall return such inadvertently produced documents, including all copies, within 14 days of receiving such a written request. The party returning such inadvertently produced documents may thereafter seek re-production of any such documents pursuant to applicable law.

11. If a party files a document containing Confidential information with the Court, it shall do so in compliance with the Electronic Case Filing Procedures for the District of Minnesota. Prior to disclosure at trial or a hearing of materials or information designated “Confidential” or “Confidential - Attorneys’ Eyes Only”, the parties may seek further protections against public disclosure from the Court.

12. Any party may request a change in the designation of any information designated “Confidential” and/or “Confidential - Attorneys’ Eyes Only”. Any such document shall be treated as designated until the change is completed. If the requested change in designation is not agreed to, the party seeking the change may move the Court for appropriate relief, providing notice to any third party whose designation of produced documents as “Confidential” and/or “Confidential - Attorneys’ Eyes Only” in the action may be affected. The party asserting that the material is Confidential shall have the burden of proving that the information in question is within the scope of protection afforded by Fed. R. Civ. P. 26(c).

13. Within 60 days of the termination of this action, including any appeals, each party shall either destroy or return to the opposing party all documents designated by the opposing party as “Confidential”, and all copies of such documents, and shall destroy all extracts and/or data taken from such documents. Each party shall provide a certification as to such return or destruction as within the 60-day period. Attorneys shall be entitled to retain, however, a set of all documents filed with the Court and all correspondence generated in connection with the action.

14. Any party may apply to the Court for a modification of the Protective Order, and nothing in the Protective Order shall be construed to prevent a party from seeking such further provisions enhancing or limiting confidentiality as may be appropriate.

15. No action taken in accordance with the Protective Order shall be construed as a waiver of any claim or defense in the action or of any position as to discoverability or admissibility of evidence.

16. The obligations imposed by the Protective Order shall survive the termination of this action. Within 60 days following the expiration of the last period for appeal from any order issued in connection with this action, the parties shall remove any materials designated "Confidential" from the office of the Clerk of Court. Following that 60-day period, the Clerk of Court shall destroy all "Confidential" materials.

Stipulated to:

Date: \_\_\_\_\_ By:

Date: \_\_\_\_\_ By:

**EXHIBIT A**

**WRITTEN ASSURANCE**

\_\_\_\_\_ declares that:

I reside at \_\_\_\_\_ in the city of \_\_\_\_\_ ,  
county \_\_\_\_\_ , state of \_\_\_\_\_ ;

I am currently employed by \_\_\_\_\_ located at  
\_\_\_\_\_ and my current job title is \_\_\_\_\_.

I have read and believe I understand the terms of the Protective Order dated \_\_\_\_\_ , filed in Civil Action No. \_\_\_\_\_, pending in the United States District Court for the District of Minnesota. I agree to comply with and be bound by the provisions of the Protective Order. I understand that any violation of the Protective Order may subject me to sanctions by the Court.

I shall not divulge any documents, or copies of documents, designated “Confidential” or “Confidential - Attorneys’ Eyes Only” obtained pursuant to such Protective Order, or the contents of such documents, to any person other than those specifically authorized by the Protective Order. I shall not copy or use such documents except for the purposes of this action and pursuant to the terms of the Protective Order.

As soon as practical, but no later than 30 days after final termination of this action, I shall return to the attorney from whom I have received them, any documents in my possession designated “Confidential” or “Confidential - Attorneys’ Eyes Only”, and all copies, excerpts, summaries, notes, digests, abstracts, and indices relating to such documents.

I submit myself to the jurisdiction of the United States District Court for the District of Minnesota for the purpose of enforcing or otherwise providing relief relating to the Protective Order.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

**FORM 6 STIPULATION FOR PROTECTIVE ORDER**

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

[NAME OF PARTY],	)	Case No. _____
	)	
Plaintiff,	)	
	)	STIPULATION FOR
v.	)	PROTECTIVE ORDER
	)	
[NAME OF PARTY],	)	
	)	
Defendant.	)	
_____	)	

Upon stipulation of the parties for an order pursuant to Fed. R.Civ. P. 26(c) that confidential information be disclosed only in designated ways:

1. As used in the Protective Order, these terms have the following meanings:
  - “Attorneys” means counsel of record;
  - “Confidential” documents are documents designated pursuant to paragraph 2;
  - “Documents” are all materials within the scope of Fed. R. Civ. P. 34;
  - “Outside Vendors” means messenger, copy, coding, and other clerical-services vendors not employed by a party or its Attorneys; and
  - “Written Assurance” means an executed document in the form attached as Exhibit A.
2. A Party may designate a document “Confidential”, to protect information within the scope of Fed. R. Civ. P. 26(c).

3. All Confidential documents, along with the information contained in the documents, shall be used solely for the purpose of this action, and no person receiving such documents shall, directly or indirectly, use, transfer, disclose, or communicate in any way the documents or their contents to any person other than those specified in paragraph. Any other use is prohibited.

4. Access to any Confidential document shall be limited to:

(a) the Court and its staff;

(b) Attorneys, their law firms, and their Outside Vendors;

(c) persons shown on the face of the document to have authored or received it;

(d) court reporters retained to transcribe testimony;

(e) the parties;

(f) outside independent persons (i.e., persons not currently or formerly employed by, consulting with, or otherwise associated with any party) who are retained by a party or its Attorneys to provide assistance as mock jurors or focus group members or the like, or to furnish technical or expert services, and/or to give testimony in this action.

5. Third parties producing documents in the course of this action may also designate documents as “Confidential”, subject to the same protections and constraints as the parties to the action. A copy of the Protective Order shall be served along with any subpoena served in connection with this action. All documents produced by such third parties shall be treated as “Confidential” for a period of 14 days from the date of

their production, and during that period any party may designate such documents as “Confidential” pursuant to the terms of the Protective Order.

6. Each person appropriately designated pursuant to paragraphs 4(f) to receive Confidential information shall execute a “Written Assurance” in the form attached as Exhibit A. Opposing counsel shall be notified at least 14 days prior to disclosure to any such person who is known to be an employee or agent of, or consultant to, any competitor of the party whose designated documents are sought to be disclosed. Such notice shall provide a reasonable description of the outside independent person to whom disclosure is sought sufficient to permit objection to be made. If a party objects in writing to such disclosure within 14 days after receipt of notice, no disclosure shall be made until the party seeking disclosure obtains the prior approval of the Court or the objecting party.

7. All depositions or portions of depositions taken in this action that contain confidential information may be designated “Confidential” and thereby obtain the protections accorded other “Confidential” documents. Confidentiality designations for depositions shall be made either on the record or by written notice to the other party within 14 days of receipt of the transcript. Unless otherwise agreed, depositions shall be treated as “Confidential” during the 14-day period following receipt of the transcript. The deposition of any witness (or any portion of such deposition) that encompasses Confidential information shall be taken only in the presence of persons who are qualified to have access to such information.

8. Any party who inadvertently fails to identify documents as “Confidential” shall, promptly upon discovery of its oversight, provide written notice of the error and substitute appropriately-designated documents. Any party receiving such improperly-designated documents shall retrieve such documents from persons not entitled to receive those documents and, upon receipt of the substitute documents, shall return or destroy the improperly-designated documents.

9. If a party files a document containing Confidential information with the Court, it shall do so in compliance with the Electronic Case Filing Procedures for the District of Minnesota. Prior to disclosure at trial or a hearing of materials or information designated “Confidential”, the parties may seek further protections against public disclosure from the Court.

10. Any party may request a change in the designation of any information designated “Confidential”. Any such document shall be treated as designated until the change is completed. If the requested change in designation is not agreed to, the party seeking the change may move the Court for appropriate relief, providing notice to any third party whose designation of produced documents as “Confidential” in the action may be affected. The party asserting that the material is Confidential shall have the burden of proving that the information in question is within the scope of protection afforded by Fed. R. Civ. P. 26(c).

11. Within 60 days of the termination of this action, including any appeals, each party shall either destroy or return to the opposing party all documents designated by the opposing party as “Confidential”, and all copies of such documents, and shall destroy all

extracts and/or data taken from such documents. Each party shall provide a certification as to such return or destruction within the 60-day period. However, Attorneys shall be entitled to retain a set of all documents filed with the Court and all correspondence generated in connection with the action.

12. Any party may apply to the Court for a modification of the Protective Order, and nothing in this Protective Order shall be construed to prevent a party from seeking such further provisions enhancing or limiting confidentiality as may be appropriate.

13. No action taken in accordance with the Protective Order shall be construed as a waiver of any claim or defense in the action or of any position as to discoverability or admissibility of evidence.

14. The obligations imposed by the Protective Order shall survive the termination of this action.

Stipulated to:

Date: \_\_\_\_\_

By:

Date: \_\_\_\_\_

By:

**EXHIBIT A**

**WRITTEN ASSURANCE**

\_\_\_\_\_ declares that:

I reside at \_\_\_\_\_ in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_.

My telephone number is \_\_\_\_\_.

I am currently employed by \_\_\_\_\_, located at \_\_\_\_\_, and my current job title is \_\_\_\_\_.

I have read and I understand the terms of the Protective Order dated \_\_\_\_\_, filed in Case No. \_\_\_\_\_, pending in the United States District Court for the District of Minnesota. I agree to comply with and be bound by the provisions of the Protective Order. I understand that any violation of the Protective Order may subject me to sanctions by the Court.

I shall not divulge any documents, or copies of documents, designated "Confidential" obtained pursuant to such Protective Order, or the contents of such documents, to any person other than those specifically authorized by the Protective Order. I shall not copy or use such documents except for the purposes of this action and pursuant to the terms of the Protective Order.

As soon as practical, but no later than 30 days after final termination of this action, I shall return to the attorney from whom I have received them, any documents in

my possession designated “Confidential”, and all copies, excerpts, summaries, notes, digests, abstracts, and indices relating to such documents.

I submit myself to the jurisdiction of the United States District Court for the District of Minnesota for the purpose of enforcing or otherwise providing relief relating to the Protective Order.

Executed on \_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)